

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.380 of 2009

P.Subbiah

...Appellant/Complainant

..Vs..

1.M/s.Aanjaay Software Ltd.,
(CST Computers)
Rep.by its Director,
Mrs.A.Anitha
No.3/5, Alonkar Aadharsh Building,
VII Avenue, Ashok Nagar,
Chennai - 600 083.

2.Mrs.A.Anitha
Director,
Aanjaay Software Ltd.,
No.3/5, Alonkar Aadharsh Building,
VII Avenue, Ashok Nagar,
Chennai - 600 083 .

...Respondents/Accused

PRAYER: Criminal Revision filed under Section 378 of the Criminal Procedure Code, to call for the records in C.C.No.6327 of 2008 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai and set aside the order of acquittal of the respondents dated 21.04.2009 and dispose it according to law.

For Petitioner : Mr.V.Johnson Yuvaraj
For Mr.G.Krishna Kumar

For Respondents: Mr.S.R.Kalyani

O R D E R

This Criminal Appeal has been filed under Section 378 of the Criminal Procedure Code, to call for the records in C.C.No.6327 of 2008 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai and set aside the order of acquittal of the respondents dated 21.04.2009.

2. The case of the prosecution is that the appellant had entered into agreement for a sum of Rs.10,00,000/- for

Franchisee on 17.10.2005 to run a training institute in computer education and as per the terms of the agreement due to non-performance caused by failure to give necessary support as agreed, the accused returned the franchise fee by issue of cheques. The accused gave 2 cheques for 5 lakhs each and one was cleared. The accused cleared the 1 lakh cheque and the 4 lakh cheque returned dishonoured. Hence, the appellant sent the legal notice calling upon the respondents to pay the cheque amount and there was no reply to the appellant. Therefore, the complaint is taken on file in C.C.No.6327 of 2008 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai.

3. Before the trial Court, the accused who are the respondents herein were questioned under Section 313 of Cr.P.C and the accused denied the charges levelled against them.

4. The trial Court conducted the trial on the side of the accused/appellant one Thiru.R.Subbiah was examined as P.W.1 and Exhibits P1 to P11 were marked. On the side of the defendants side no witness was examined and no documents were marked.

5. Considering the oral and documentary evidence, the trial Court has acquitted the accused as against the respondents.

6. Heard both sides.

7. The learned counsel for the petitioner has submitted that the trial Court has committed an error and taking note of the fact that there was no pre-existing legally enforceable debt for the issuance for the cheque-in-issue and there was an agreement between the petitioner and the respondent, the trial Court ought not to have dismissed the petition and hence, he prayed for allowing the revision.

8. Per contra, the learned counsel for the respondent drawn my attention to the fact that there was an agreement entered into between the parties on 17.01.2005 and the cheque is dated 5.8.2007 for a sum of Rs.1,75,000/- and the petitioner-private complainant has failed to demonstrate before the Court that there was a pre-existing legally enforceable debt.

9. After going through the records and also considering the findings of the trial Court, this Court finds that during the evidence, the petitioner has been examined as P.W.1 and he marked Exhibits P1 to P7. However, the alleged pre-existing legally enforceable liability said to have arisen from the purchase agreement, was not marked in the absence any explanation for non-making the said agreement an adverse inference has been drawn by the trial Court. Furthermore, the trial Court also took note of the incident that the very same

cheque had been re-presented twice and it has been dishonoured. However, it appears, there is no whisper regarding the same.

10. Considering the fact that the respondent has specifically denied any legally existing liability and for the non-production of the agreement to show that there was a pre-existing legally enforceable debt for the issuance of the cheque, the impugned order is found to be correct on the evidence adduced before the Court and hence, it does not call for any interference by this Court. Accordingly, the revision petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The XVII Metropolitan Magistrate Court, Saidapet, Chennai

2.do Thro The Chief Metropolitan Magistrate,
Egmore.

3.The Section Officer, Criminal Section,
High Court, Madras.

+1cc to Dr.S.R.Kalyani, Advocate sr.no.55562

Crl.A.No.380 of 2009

gj (co)
nr 26/09/2018

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