

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.06.2018

Pronounced on : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.185 of 2008

M.Jayabal,
S/o. Louis,
No.3, Dharani Motors Complex,
JGHS School Road,
Tirupur. Appellant/Complainant

Vs.

C.P.Manivel,
A.S.Ginning Compound,
Opp: Rajanarayan Textiles,
Kangeyam Road,
Tirupur. Respondent/Accused

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal by the Judgment dated 20.09.2007 made in S.T.C.No.437 of 2005 on the file of the Judicial Magistrate Court No.I, Tirupur and convict the respondent herein of the offence under Section 138 of the Negotiable Instrument Act.

For Petitioner : No appearance
For Respondents: No appearance

J U D G M E N T
सत्यमेव जयते

This Criminal Appeal is filed to set aside the order of acquittal by the Judgment dated 20.09.2007 made in S.T.C.No.437 of 2005 on the file of the Judicial Magistrate Court No.I, Tirupur and convict the respondent herein of the offence under Section 138 of the Negotiable Instrument Act.

2.This case was taken up on special sitting, Saturday i.e. on 23-06-2018, prior to which advance list has been printed and circulated in the cause list for a period of two weeks. On the day of special sitting, when the case was called up both petitioner and respondent had not appeared. It is a case of the

year 2008, pending for more than 10 years, without any progress. This appeal is against the order of judgment of acquittal rendered by the learned Judicial Magistrate No.I, Tiruppur in STC No.437 of 2005 dated 20-9-2007. Hence, considering the inordinate delay and it is be found from the records that both petitioner and respondent have not appeared even when the case was referred to Mega Lok Adalath and further, adjourning the case will be of no purpose. Hence, on perusal of the records, this Court proposes to take up the appeal and dispose the same on merits.

3.The above appeal is filed by the appellant, who is the complainant in STC No.437 of 2005 against the judgment of acquittal in a case filed under Section 138 Negotiable Instruments Act rendered by the learned Judicial Magistrate No.I, Tiruppur on 20-09-2007. The respondent is the accused before the trial court.

4.The case of the appellant is that when the respondent had admitted the signature on the cheque, the burden is on the respondent that there was no liability on his part towards the petitioner. Further, the lower Court placing the burden on the appellant to prove the respondent's liability is bad in law. It is revealed from the documents that selling of quota system of knitwear for export was in vogue and the respondent had purchased one such quota for which the cheque in question has been issued, which the appellant had proved by oral and documentary evidence. But the lower Court had failed to consider these aspects and had acquitted the respondent. Hence the appeal.

5.On perusal of the lower Court Judgment, it could be seen that it is a well reasoned judgment wherein the trial court had in detail discussed about the quota system being traded. The trial Court accept the explanation of the respondent that he was a part time employee of the appellant and had handed over signed blank cheque and further, the cheque was not issued towards any liability. From the admission of the complainant, he had sold the quota to the respondent, but he is not an exporter to whom quota was allotted by the Government dilutes and the stand of the appellant becomes questionable. Ex.P1, Bill in which the appellant was resting his case, the lower Court found that in Ex.P1, there is no seal or signature of the respondent. It is a computerized reproduction of the bill, which could be generated at any point of time and any number of copies and Ex.P1, is a self-serving document.

6.Further the trial Court found that the admission of the appellant that he doesn't own any license and he is not an exporter and quota is only by the Central Government only to the Exporters and quotas are not assigned to any individuals.

Further, it is noted that the appellant admits that there is no proof for selling of quota to the respondent and the said quota has been used by the appellant to export and make money.

7.Further, the appellant has not been specific from whom he had acquired the quota, which quota was sold to the respondent. In view of the respondent denying the same and the respondent examining him as DW1 rebutting the initial presumption, it is to be seen whether the appellant had proved the case by cogent evidence and documents. In such circumstances, the lower Court had come to a conclusion and had given a finding relying upon the Hon'ble Apex Court Judgments and had acquitted the respondent from the above case. In such circumstances, this Court feels that there is no infirmity and perverseness in finding and judgment of the trial court.

8.In view of the above, the appeal filed by the appellant is dismissed and the Judgment of acquittal dated 20.09.2007 made in S.T.C.No.437 of 2005 passed by the learned Judicial Magistrate Court No.I, Tirupur is confirmed. No costs.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Tirupur.

2. Thro The Chief Judicial Magistrate,
Coimbatore.

Copy to

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

Cr1.A.No.185 of 2008

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