

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Criminal Appeal No.206 of 2007

M/s.Agri Development
Finance (Tamil Nadu) Ltd.,
Rep by its Officer,
Mr.D.Dhanasekar,
No.560,562, Anna Salai,
Chennai - 600 018.

...Appellant/Complainant

Versus

1. S&S Industries and
Enterprises Ltd., rep.,
by its Managing Director,
No.158, Arcot Road,
Vadapalani,
Chennai-600 026.

2. A.R.Santhanakrishnan
3. V.S.Narayanan
4. N.kannan
5. N.Santhanam

...Respondents/Accused

Criminal Appeal filed under Section 378 of Criminal
Procedure Code, against the order and judgement dated 23.01.2007
in C.C.No.5137 of 1998 on the file of the learned XVIII
Metropolitan Magistrate, Saidapet, Chennai.

For Appellant : Mr.Abdul Saleem for
Mr.Anand Abdul & Vinodh Associates
For Respondents: No appearance.

JUDGMENT

The appeal is directed as against the order dated
23.01.2007, passed in C.C.5137 of 1998 on the file of the
learned XVIII Metropolitan Magistrate, Saidapet, Chennai,
thereby acquitted the respondents for the offence under Section
138 of Negotiable Instruments Act.

2. The case of the appellant/complainant is that the appellant company engaged in finance business. The first respondent/accused is a public limited company approached the appellant for financial assistance to increase their working capital for expansion of their business during July, 1997. In which, the appellant extended financial assistance to the tune of Rs.2 crores till May, 1998. Towards repayment of the said financial assistance, the respondents issued three cheques dated 10.06.1998, 21.06.1988 and 24.06.1998 for a sum of Rs.67 lakhs, Rs.30 lakhs and Rs.20 lakhs respectively. All the cheques were presented and the same were returned dishonoured for the reason "Funds Insufficient" by the return memo dated 25.06.1998 and the same was intimated to the appellant through debit advice dated 26.06.1998. Thereafter, the appellant issued statutory notice on 26.06.1998 and the same was duly received and acknowledged by the respondents on 28.06.1998. Thereafter, the appellant presented the complaint before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

3. On the side of the complainant P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.15 were marked. The respondents marked their exhibits Ex.D.1 to Ex.D.6 through P.W.1.

4. The respondents took a specific stand that there was no legally enforceable debts on the date of cause of action to lodge the complaint against them. Another specific stand taken by the respondents is that the complaint itself barred by limitation and it was not at all maintainable to take cognizance.

5. Heard the learned counsel for the appellant and no appearance on the side of the respondents.

6. It is seen from the records that the cheques were issued towards partial repayment of the financial assistance made by the appellant on 10.06.1998, 21.06.1988 and 24.06.1998 respectively. The appellant issued letter dated 08.05.1998 which was marked as Ex.D.2 and extended the due date for further period of 30 days. Thus, the due date for repayment was extended for further period of 30 days and there was no legally enforceable liability on the date of issuance of cheques dated 10.06.1998, 21.06.1988 and 24.06.1998. It is also seen that those cheques were handed over to the appellant at the time of giving financial assistance, as security purpose. Therefore, the learned Magistrate rightly concluded that there was no legally enforceable liability, when the cheques in question were issued and on the date when it were presented for payment and as on the date of cause of action.

7. The alleged cheques were returned dishonoured on 26.06.1998 and on the same day, the appellant issued notice dated 26.06.1998, which was marked as Ex.D.6 and demanded the cheques amounts as contemplated under Section 138(b) of Negotiable Instruments Act. It was received by the respondents on 28.06.1998. Once again, the appellant caused another notice through it's counsel on 06.07.1998 to the respondents demanding the cheque amounts and it was received by them on 09.07.1998. As per the first notice, the cause of action arose to file complaint from 13.07.1998 and the complaint ought to have been filed on or before 12.08.1998. But the appellant filed the complaint only on 17.08.1998. Hence, the complaint was not maintainable and barred by limitation.

8. Therefore, in view of the above discussions and the materials available on records would show that the appellant failed to prove his case and the learned Magistrate rightly acquitted the respondents. As such there is no infirmity or illegality in the order dated 23.01.2007 in C.C.No.5137 of 1998, passed by the learned XVIII Metropolitan Magistrate, Saidapet and the order does not warrant any interference from this Court and the appeal is liable to be dismissed. Accordingly, the appeal is dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The XVIII Metropolitan Magistrate, Saidapet, Chennai.
2. The Chief Metropolitan Magistrate, Chennai.

Copy To

The Section Officer,
Criminal Section, High Court, Madras-104

+1cc to Mr.Anand Abdul & Vinodh Associates, Advocate,
S.R.No.40011

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SV(CO)
BM 09/07/2018