

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Criminal Appeal No.207 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.5122 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.5122 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 a cheque dated 13.05.1998 for a sum of Rs.33 lakhs. When the cheque was presented by the appellant the same was returned dishonoured for the reason "Funds Insufficient" by the return memo dated 15.05.1998 and the same was intimated to the appellant through debit advice dated 16.05.1998. Thereafter, the appellant issued statutory notice on 16.05.1998 and the same was duly received and acknowledged by the respondents on 18.05.1998. 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.11 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 cheque was issued towards partial repayment of the financial assistance made by the appellant on 13.05.1998. 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 cheque dated 13.05.1998. It is also seen that the cheque was 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 cheque in question was issued and on the date when it was presented for payment and as on the date of cause of action.

7. The alleged cheque was returned dishonoured on 16.05.1998 and on the same day, the appellant issued notice dated 16.05.1998, which was marked as Ex.D.5 and demanded the cheque amount as contemplated under Section 138(b) of Negotiable Instruments Act. It was received by the respondents on 18.05.1998. Once again, the appellant caused another notice through it's counsel on 26.05.1998 to the respondents demanding the cheque amount and it was received by them on 01.06.1998. As per the first notice dated 16.05.1998, the cause of action arose to file a complaint from 02.06.1998 and the complaint ought to have been filed on or before 01.07.1998. Even as per the second notice dated 26.05.1998, the cause of action arose on 13.06.1998 to file complaint and the complaint ought to have been filed on or before 12.07.1998. 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.5122 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

rts

To

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

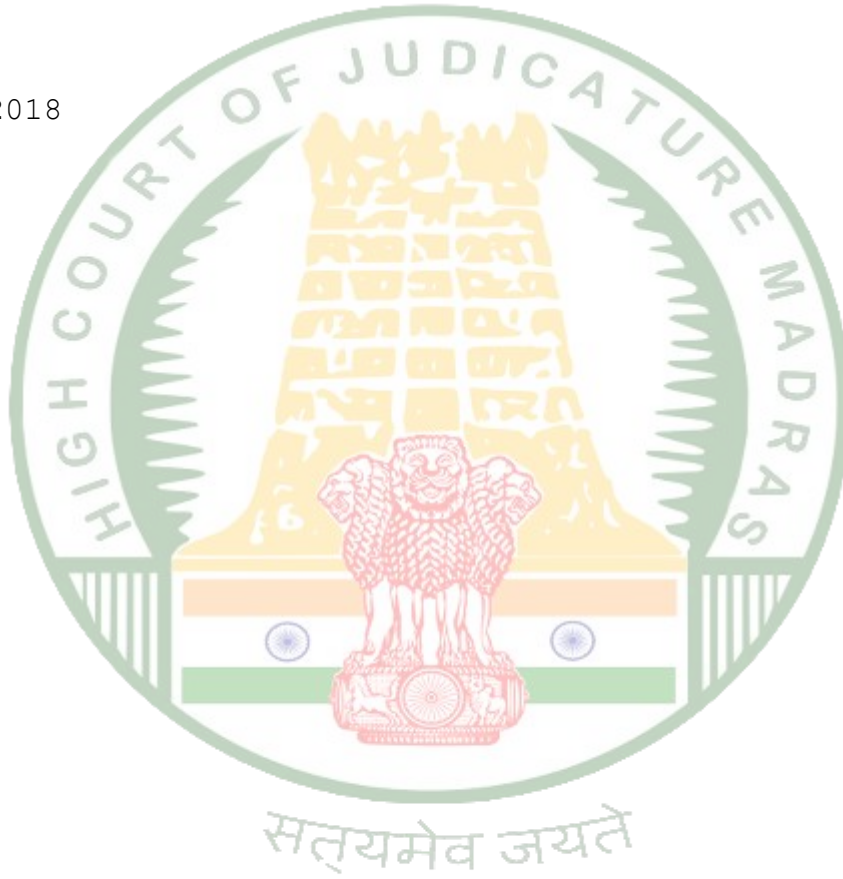
Copy To

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

+1cc to Mr.Anand Abdul & Vinodh Associates, Advocate,
S.R.No. 40010.

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SV(CO)
BM 09/07/2018



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