

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2018

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

Crl.A.No.580 of 2009

S.Gunasekaran

.. Appellant/Complainant

vs.

1. M/s. Thirupathy Textiles,
rep. by G.Velumani
Thirupur.

2. G.Velumani

... Respondent/Accused 1 & 2

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgement of acquittal passed in C.C.No.30 of 2000, dated 29.07.2009 on the file of the learned Judicial Magistrate, Avinashi.

For Petitioner : Mr.S.N.Thangaraj
For Respondent : Mr.A.P.Srinivas

O R D E R

Appellant/Complainant has preferred a complaint against the accused under Section 138 of the Negotiable Instruments Act and the same was taken cognizance in C.C.No.30 of 2000, on the file of the learned Judicial Magistrate, Avinashi. By order dated 29.07.2009, the learned Judicial Magistrate had acquitted the accused. Aggrieved over the same, this present Criminal Appeal has been filed. सत्यमेव जयते

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3.Learned counsel appearing for the appellant would contend that though there is clear admission with regard to the signature, by the second accused in Ex.P1, Cheque and she had further deposed that her father had authorized her to sign the cheque on behalf of him, the court below failed to look into the same and had erroneously acquitted the accused. The court below has also not taken into account the fact that the accused have evaded the service of notice, hence, the order of the court below needs interference.

4.Per contra, learned counsel for the respondent would contend that only after detailed discussion regarding service of notice and the non-joinder of necessary party in the Calender Case, the court below had acquitted the accused and hence, prays for dismissal the Criminal Appeal.

5. I have heard the arguments advanced on either side and have perused the records placed before this Court.

6. Admittedly, on behalf of company/first accused, one Mr.Muthu Ramaswamy, who is the power agent has issued the cheque. But the complainant has not impleaded him as necessary party to the aforesaid 138 proceedings. However, he has wrongly mentioned the second accused as owner of the company/first accused. Moreover, no notice had been admittedly served on the drawer of the cheque. In the absence of service of notice on the drawer of the cheque, even without making him as party to the proceedings, there cannot be any justification in fixing the liability. Therefore, this court is of the view that the order passed by the learned Magistrate does not requires interference from this Court.

7. In the result, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

smi

To

1.The Judicial Magistrate, Avinashi.

2.The Chief Judicial Magistrate, Coimbatore

3.The Public Prosecutor, High Court, Madras.

Copy To

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

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.8838

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sj(co)

cs/05/03/18