

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.06.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 601 of 2009

M/s.Madras Cements Ltd.,
Rep. by its Authorized
Rep. Mr.S.Ramachandran,
IV Floor, 98-A, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600004.

.. Appellant /Complainant

Vs.

M.Sanjeevi,
Prop. of M/s.Sanjeevi Trans,
No.8, Suburaya Street,
Shenoy Nagar, Chennai - 600 030

..Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, against the Judgment dated 06.07.2009 in C.C.No.5154 of 2004 passed by the Hon'ble XVI Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.P.Ramesh Kumar

For Respondent : Mr.A.Sakthivel

JUDGMENT

The appeal is directed against the order of acquittal passed by the XVI Metropolitan Magistrate Court in C.C.No.5154 of 2004 dated 06.07.2009.

2. The case of the prosecution in the Trial Court is as follows:

PW1, Ramachandran was working as a Manager in appellant's company. The accused/respondent was a proprietor M/s. Sanjeevi Trans, alleged before the present complainant. Inorder to discharge the liability of one C.K.Amirthavalli, the accused had issued a cheque bearing No.730312 dated 30.09.2003 drawn on

Dena Bank, Aminjikarai Branch, Chennai - 29, for a sum of Rs.55,500/-. The complainant had deposited the said cheque on 26.03.2004 through the Bank of Hyderabad, Chennai Main Branch, but the cheque was returned for the reason as 'Exceeds arrangements'. This was intimated to the complainant by its bank on 29.03.2003 through debit advise.

3. On 06.04.2004, the appellant issued a statutory notice to the respondent and the same was received by the respondent on 12.04.2004 and the respondent also issued a reply notice to the appellant against which the complaint has been lodged before the XVI Metropolitan Magistrate Court .

4. Thus, in the Trial Court, one Mr. Ramachandran examined as PW1 and 9 Exhibits were marked. No documents were marked on the side of the respondent. After concluding the trial, the learned XVI Metropolitan Magistrate Court came to the conclusion that the respondent herein has not committed any offence under section 138 of the Negotiable Instruments Act as alleged by the appellant. Against which, the appellant approached this Court by way of an appeal praying to set aside the Judgment rendered by the XVI Metropolitan Magistrate Court.

5. Today, when the appeal is taken up for hearing, Mr. P.Ramesh kumar, learned counsel appearing for the appellant and Mr.A.Sakthivel, learned counsel appearing for the respondent are present.

6. In order to substantiate the claim made by the appellant, the learned counsel appearing for the appellant would submit that in the complaint and in the notice, it was mentioned that the cheque has been issued by the respondent in order to discharge the liability of one C.K.Amirthavalli. But he admitted in the proof affidavit that the respondent had purchased the cement from the complainant company on credit basis, towards the cement so sold and delivered to the accused on various dates, the accused is due and liable to pay a sum of Rs.55,500/-, which is a grammatical error made by the appellant in the Trial Court thereby, he wanted to set aside the judgment rendered by the Trial Court and for remanding back to the Trial court.

7. The defence taken by the respondent is that there is no privity of contract between the appellant and the respondent. Further, the relationship between the C.K.Amirthavalli and the respondent had not been established by the appellant, thereby in the stage of appeal remitting the case is against the law, further he prays for dismissal of the appeal.

8. It is an admitted fact upto the level of filing complaint, the appellant alleged as the liabilities are only

with C.K.Amirthavalli. Further, it is stated that the cheque pertaining to this case have been issued only in order to discharge the liability of C.K.Amirthavalli.

9. Now, on going through the proof affidavit filed by Ramachandran, it was mentioned that the accused is one of the dealers of the complainant company and purchased the cement from the company on credit basis, towards the cement so sold he is liable to pay Rs.55,500/- for which he issued the cheques. Further, the statement of account Ex.P3 reflects the entire transactions between the accused and the complainant. Thereafter, only in the cross examination, he mentioned it is a grammatical error, as the respondent is dealer in Annanagar area. Further, he admitted in order to show the liability of the respondent, he had not submitted any invoice.

10. The said evidence given by the PW1 indicates that the respondent alone purchased the cement on credit basis. In this case, no documents were produced by the appellants to show the relationship between the respondent and C.K.Amirthavalli.

11. In the said circumstances, if the contention raised by the appellant is true, it is not necessary for PW1 to prove that the respondent alone purchased the cement on credit basis. Thereby, in the Trial Court, only after considering the said aspect, came to the conclusion that the respondent is not liable and not committed any offence under section 138 of the Negotiable Instruments Act.

12. In the light of the above discussion, this Court came to the conclusion that the findings arrived by the Trial Court is correct and this appeal is liable to be disposed of. Accordingly, the criminal appeal is disposed of.

Sd/-

सत्यमेव जयते Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Metropolitan Magistrate,
George Town, Chennai.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai

3.The Section Officer,
Criminal Section, High Court, Madras.(2copies)

+2cc to Mr.M.Aravind Kumar, Advocate, S.R.No.37804

CrI.A.No. 601 of 2009

RV (CO)
GSP (17/07/2018)



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