

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.207 of 2008

Indian Commerce and Industries Company Pvt. Ltd.,
Rep. by its Company Secretary,
G.S.Santhana Gopalan,
29, Prakasam Salai,
Chennai-600 108. ... Appellant

Vs

1.Agents Alluminium Co. Ltd.,
rep. by its Director R.Srikanth
No.3, Karumariamman Koil Street,
Chennai-600 026.
2.P.Srikanth
Director,
Agents Alluminium Co. Ltd.,
No.3, Karumariamman Koil Street,
Chennai-600 026. ... Respondents

Prayer: Criminal Appeal filed under Section 378(1) of the Criminal Procedure Code, to set aside the Order dated 21.11.2007 in C.A.No.230 of 2006 passed by the learned VI Additional City Civil Judge, Chennai and restore the judgment passed in C.C.No.96 of 2001 dated 14.07.2006 on the file of the XV Metropolitan Magistrate Court, George Town, Chennai.

For Appellant : Mr.P.Arfrar Mohammed
for M/s.A.K.Mylsamy and Associates

For Respondents : Mr.P.A.K.Prakash
Legal Aid Counsel

JUDGMENT

This criminal appeal is preferred by the appellant against the order of acquittal passed by the learned VI Additional Judge, Chennai in C.A.No.230 of 2006 dated 21.11.2007 reversing the order of conviction and sentence imposed by the learned XV Metropolitan Magistrate George Town under section 138 of the Negotiable Instrument Act.

2. Brief case of the appellant/complainant

The appellant is a private limited company at Chennai placed an order on 31.8.2000 to the respondent for supply of indol alluminium roughed sheets, since the 1st respondent is an agent for Indian Aluminium Company Limited. The appellant enclosed a cheque for a sum of Rs.13,15,097/- along with the purchase order for which the 1st respondent has given a stamped receipt. On 4.11.2000 The 1st respondent informed to the appellant that due to certain technical snag in the plant and the amount Rs.13,15,097/- has been adjusted by his overdraft account. The 1st respondent promised and assured that it would be refund the advance which is given earlier along with the purchase order and issued a post dated cheque for Rs.13,15,097/- dated 20.11.2000 drawn on Standard Chartered Grindlays Bank. The appellant deposited the said cheque by its bankers viz, Bank of Baroda, Chennai. The appellant's bankers intimated by its memo dated 11.11.2000 that cheque has been returned by respondent's bankers with an endorsement "funds not arranged for". The appellant sent a statutory notice on 13.12.2000 to the respondents and it was acknowledged by the respondents on 20.12.2000. The appellant filed a case before the learned XV Metropolitan Magistrate George Town in C.C.No.96 of 2001 under section 138 r/w 132 of Negotiable Instrument Act.

3. During trial the appellant himself examined as PW1 and Exhibits P1 to P12 were marked on his side. The respondent examined DW1 and DW2 and marked Exhibits-D1 to D6. On completion of the trial, the learned trial judge convicted the respondents/accused under section 138 of the Negotiable Instrument Act and sentenced him to undergo simple imprisonment for a period of 6 months and imposed fine of Rs.5,000/- and in default to undergo simple imprisonment for 2 months and fine of Rs.10,000/-.

4. Aggrieved over the same, the respondents/accused preferred criminal appeal before the learned VI Additional Judge, Chennai in CrI.A.No.230 of 2006 and the learned lower appellate Court after appreciating the case of both parties, allowed the appeal and acquitted the respondents.

5. The learned counsel for the appellant submits that the learned judge failed to see that the directors of the appellant at its meeting held on 29.12.2000 has authorized G.S.Santha Gopalan, Company Secretary to present the complaint on its behalf against the respondents and Xerox copy of the said resolution of the board is certified by the Chairman of the meeting is marked as exhibit P1 and has been certified by the Chairman of the said meeting and the extract will not disclose the name of directors who have participated at the board meeting.

6.The learned counsel for the appellant submits that the learned judge has erred in relying upon Article 42 of the Articles of Association of the appellant which is marked as Ex.P1. The said article relates to business to be transacted at the General Body Meeting and the quorum for the general meeting is different from the quorum in Board meeting.

7.The learned counsel for the appellant submits that the learned judge has erred in coming to the conclusion that Exhibit-P1 did not disclose how many directors participated at the board and failed to see that what was filed and marked as Exhibit-P1 was extract of the proceedings of the board and unless entire proceedings of the board is filed, extract will not disclose the number of directors present.

8.The learned counsel for the appellant submits that the learned judge failed to see that in case of a private limited company as per articles of the appellant marked as Ex.D1, the quorum for the board meeting is only two.

9.The learned counsel for the respondent opposed the contentions of the appellant and supported the findings of the lower appellate Court.

10.I heard Mr.P.Arfrar Mohammed for M/s.A.K.Mylsamy and Associates, learned counsel for the appellant and Mr.P.A.K.Prakash, learned Legal Aid Counsel for the respondents and perused the entire materials available on record.

11.It is seen from the case records that the appellant filed the complaint before the trial Court and the original resolution was marked as Exhibit P2 containing the minutes book page Nos.72 and 73. In the minutes book, the directors namely C.Srinivasan and C.Raveendran were present and one G.S.Santhanagopalan, company secretary is authorised to present the complaint against the respondents under the Negotiable Instrument Act.

12.The learned lower appellate Court after appreciating the Exhibits held that the resolution Exhibit P1 which is the extract of the resolution mentioned in page No.73 of the original resolution dated 29.12.2000 is not a valid resolution in the absence of two directors as said in Exhibit P2.

13.The learned lower appellate Court misread the Exhibits P1 and P2 and deviated from the documents filed on behalf of the appellant.

14.On perusal of records, it shows that Exhibit P2 is the original resolution supported by the directors having the minimum quorum, participated in the meeting. The evidence of PW1 ought to have been read as a whole and one contra statement cannot be taken as a defect to dislodge his case. Further the

documents filed corroborated the evidence of PW1. Hence Exhibit P1 is a valid resolution and categorically disclosed the directors participated in the resolution giving authorization to the company secretary to initiate the complaint.

15. In the result, the appeal filed by the appellant is allowed and the order passed by the lower appellate Court namely the VI Additional City Civil Judge, Chennai in C.A.No.230 of 2006 is set aside and the order passed by the learned XV Metropolitan Magistrate, George Town, Chennai in C.C.No.96 of 2001 dated 14.07.2006 is restored.

16. The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Mr.P.A.K.Prakash, Legal Aid Advocate.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

1. The VI Additional City Civil Judge, Chennai.
 2. The XV Metropolitan Magistrate,
George Town, Chennai.
 3. The Chief Metropolitan Magistrate, Egmore.
 4. The Secretary,
Tamil Nadu Legal Services Authority, Chennai-104
 5. P.A.K.Prakash, Advocate, 319,
II Floor New Additional Law Chamber, Chennai - 104.
- +1cc to Mr.A.K.Mylsamy, Advocate SR.No.20849

Criminal Appeal No.207 of 2008

GMY(30/01/2019)