IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.627 of 2009

M/s.KHEC Technologies (India) Pvt. Ltd.,
Rep. by its authorized representative
Mr.Paraman,
42, First Main Road, CIT Nagar West,
Nandanam,
Chennai 600 031. ... Appellant/Complainant

Vs.

R.S.Gowrishankar ... Respondent/Accused

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in acquitting the accused/respondent in C.C.No.519 of 2004 in and by his judgment dated 16.04.2009 for the offence under Section 138 of Negotiable Instruments Act and prays that this Court to set aside the same.

For Appellant : Mr.T.Shanmugam
for M/s.R.Karthikeyan

For Respondent : Mr.K.Sasikumar
Legal Aid counsel

JUDGMENT

The instant Criminal Appeal is preferred as against the judgment passed in C.C.No.519 of 2004 on the file of the learned XVIIth Metropolitan Magistrate, Chennai dated 16.04.2009.

2.The case of the appellant is that he is the complainant in a Calendar Case No.519 of 2004. The said case was initiated under Section 138 of Negotiable Instruments Act. According to the appellant that the Respondent/Accused in the instant case is formerly served in the complainant private limited company as Managing Director. Since a sum of Rs.20,00,000/- was misappropriated by him, the service of the respondent/accused was terminated and thereafter by accepting his guilty the Respondent/Accused issued 4 cheques each for value of Rs.5,00,000/- in favour of the complainant. Among the four cheques issued, one cheque was honoured and other 3 cheques drawn at ICICI Bank, West Mambalam Branch dated 12.05.2003, 16.05.2003 and 19.05.2003 were presented by the appellant/complainant on 08.10.2003 in his bank M/s. State Bank of India, Small Scale Industries Branch, Nungambakkam, Chennai. Those cheques were returned as unpaid on 09.10.2003, which constrained the Appellant/Complainant to cause a statutory demand notice on 14.10.2003 but the same was returned as unserved. Hence, the Appellant filed his complaint under section 142 of the Negotiable Instruments Act for the commission of offence punishable under section 138 of Negotiable Instruments Act.

3.During the trial on the side of complainant, three witness were examined and Exhibits P1 to P15 were marked, at the same time on the side of Respondent/Accused, 2 witness were examined and Exhibits D1 to D7 were marked.

4.The specific case of Appellant/Complainant is that the Respondent/Accused is the former Managing Director of company and when he served in the company, he involved in a misappropriation to the tune of Rs.20,00,000/-. In this regard a complaint was lodged with the Deputy Commissioner of Police, T.Nagar, Chennai. The said complaint was forwarded to the file of the Inspector of Police, Sydhapet Police Station Chennai. Based on the complaint, a case in Crime No.482 of 2013 was registered as against the Respondent/Accused herein for the offence under Sections 406, 420, 506(ii) of IPC. The said complaint was marked as exhibit D5 before the learned Trial Court. In this connection DW-1 namely one Rajamani, the then Inspector of Police, Sydhapet Police Station was examined, from whose evidence, it was revealed that in respect of money transactions a complaint was lodged and the Appellant and the Respondent have undergone negotiation and thereafter the said complaint was closed as mistake of fact as the parties concerned entered into compromise.

5.The learned counsel for the Appellant/Complainant would submit that the complainant had discharged the initial burden of proof in proving that in lieu of the legally enforceable debt the cheques in dispute were issued infavour of the Appellant/Complainant. Further among the four cheques issued by the Respondent/Accused, one cheque alone was honoured, the other cheques were dishonoured. So, it could easily be presumed that the cheques were not obtained by using undue influence in the police station. He adds further that within the period of limitation, the statutory legal notice, exhibit P-8 was issued and the same was returned as un-served, but with the postal endorsement that intimation was delivered. Once the intimation is delivered by postal authority concerned, it has to be considered as the Respondent/Accused had knowledge about the demand notice. So, it is a deemed service. Unfortunately the learned Trial Court has miserably failed to appreciate the delivery of intimation by the postal authority and held that the service of statutory notice was incomplete.

6.Apart from that though the Appellant/Complainant proved that the cheques in dispute were issued in discharge of legally enforceable debt that was not considered but doubted the case of the Appellant/Complainant as the cheques were returned as unpaid not on the ground of insufficiency of fund but on the ground of "payment stopped by the drawer". The learned Magistrate has failed to consider though the cheques were returned as unpaid for the reason that payment stopped by the drawer, the same has to be taken as dishonor of cheque, therefore, he prays this court to allow the appeal.

7.Per contra, the learned counsel for the Respondent/Accused would contend that the cheques in dispute were obtained during the police enquiry by force and the same has been proved by examined DW-1. Apart from that the Respondent/Accused has proved that the cheques were not issued in discharge of a legally enforceable debt. Moreover, in the accounts of the complainant company, there were mismanagements and they have proved and those grounds were appreciated by the learned Trial Court as legally sustainable. To support his contention, the learned counsel for the Respondent/Accused relied on a judgment reported in 2004 3 CTC 573, wherein it is held that though in the postal envelope it was mentioned by the concerned authority that the intimation was served and not claimed it must be averred in the complaint that accused intentionally evaded service of legal notice, if no such averments were found in the complaint, then the complaint suffers infirmity that would lead to acquit the accused from the charges. In the instant case absolutely there is no averment in the complaint as to whether the accused evaded service or not, therefore the case of the Appellant/complainant is legally unsustainable and the appeal must be dismissed.

8.I heard Mr.T.Shanmugam for Mr.R.Karthikeyan learned counsel for the petitioner and Mr.K.Sasikumar, Legal Aid counsel for the respondent and the materials available on records are perused.

9.It is the admitted fact that the Respondent/Accused was the former Managing Director of the complainant company. The reason adduced in the complaint and it is the case of complainant also that since the Respondent/Accused involved in misappropriation, police complaint was lodged and the same was registered in Crime No. 482 of 2013. However, though it is contended that the cheques in dispute were obtained in the police enquiry, the evidence of DW-1 has not in that line and he has not stated that the cheques in dispute were handed over during the police enquiry or out of the police enquiry. When no such evidence was let in on the side of the Respondent/Accused, then it cannot be considered that the cheques in dispute were obtained by using force or in the police custody. Apart from that another point raised by the counsel for Respondent/Accused that the cheques in dispute were not issued for a legally enforceable debt but it was obtained by force. When the evidence adduced on the side of the Respondent/Accused was perused no explanation is offered as to why the accused issued four cheques and out of that why one cheque alone was allowed to get honored. When the accused has taken a stand stating that there is no legally enforceable debt then he ought to have offered explanation as to why the cheques were issued by him in favour of the complainant. Once such a stand is taken by the Respondent/Accused then it is his duty to prove the same in the manner know to law.

10.Here in the instant case no explanation is offered by the Accused as to for what purpose he issued four cheques and for what purpose one cheque alone was allowed to get honored and the other cheques were allowed to get dishonored.

11.Apart from that the stand taken by the Respondent/Accused as if the statutory notice was not properly served upon him cannot be appreciated for the reason that the accused received summons from the court by the same address where statutory demand notice was sent by the Appellant/Accused. So, it is to be considered that the statutory notice was served upon him by the postal authorities.

12.In the light of the above discussion, the judgment of Trial Court in C.C.No.519 of 2004 is required interference. Accordingly the judgment of the learned Trial Court is set-aside and the Respondent/Accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and ordered to undergo a simple imprisonment for a period of one year and to pay fine a sum of Rs.10,000/- in default to undergo a simple imprisonment for a period of 1 month. The respondent/accused is also directed to pay compensation of Rs.15,00,000/- to the appellant/complainant. Accordingly the appeal succeeds and allowed.

The Tamil Nadu State Legal Services Authority, High Court Buildings, Chennai-600 104 is directed to pay a sum of Rs.3,000/- to Mr.K.Sasikumar.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Member-Secretary,
Tamil Nadu State Legal Services Authority,
High Court, Building, Chennai.

Crl.A.No.627 of 2009

GP(co)

rrs 18/09/2018