IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2018

Delivered on : 29.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.232 of 2007

Alangombu Devanga Handloom Weavers Co-operative
Production and Sales Society Ltd., K-1317,
rep. by its Manager Manoharan
Alangombu, Sirimugai,
Coimbatore District. ... Appellant / Respondent/Complainant

Vs

C.Govindaraj ... Respondent/Appellant/ Accused

Appeal under Section 378 of the Code of Criminal Procedure against the judgment dated 03.1.2007 made in C.A.No.406 of 2006 on the file of the Additional District Court/Fast Track Court No.I, Coimbatore reversing the conviction imposed in the judgment dated 13.09.2006 made in C.C.No.504 of 2003 on the file of the Judicial Magistrate No.V, Coimbatore.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.M.Saravanan

JUDGMENT

This appeal has been filed by the appellant seeking to set aside the judgment dated 03.01.2007 passed in C.A.No.406 of 2006 on the file of the learned Additional District Judge, Fast Track Court No.I, Coimbatore, reversing the conviction imposed in the judgment dated 13.09.2006 made in C.C.No.504 of 2003 on the file of the learned Judicial Magistrate No.V, Coimbatore.

2. The case of the appellant/complainant is that they were manufacturing textile goods and the respondent/accused was running hand loom textile centre under the name and style of Siddhappa Chettiar Hand loom Saree Centre at Coimbatore and he used to purchase sarees from the appellant on credit basis from 1999 onwards and the respondent was paying the amount to the

appellant. On 29.3.2003, the respondent purchased 575 sarees in different categories on credit basis to the tune of Rs.2,42,886/-, for which he had issued a cheque bearing No.447955 for Rs.2,42,886/- drawn on Bank of Madura Limited, Coimbatore Main Branch. When the appellant presented the cheque through their banker viz., Coimbatore District Central Co-operative Bank Limited, Mettupalayam on 9.4.2003, it was returned as “account closed”. Thereafter, on 19.4.2003 the appellant issued a lawyer notice to the respondent and despite receipt of the notice, the respondent did not come forward to pay the amount. Hence, the appellant filed complaint under Section 138 of Negotiable Instruments Act.

3. To prove the case, the Manager of the appellant was examined as P.W.1 and Exs.P1 to P10 were marked. The respondent/accused was questioned about the incriminating circumstances appearing against him under Section 313 Cr.P.C., which he died. On the side of the accused/respondent, the accused examined himself as D.W.1. One Balakrishnan was examined as D.W.2 and Exs.R1 to R19 were marked.

4. After appreciating the evidence, both oral and documentary, the trial Court convicted the appellant and sentenced him to undergo simple imprisonment for six months and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for three months. Aggrieved by the same, the respondent preferred appeal being C.A.No.406 of 2006.

5. By the judgment dated 03.1.2007, the learned Additional District Judge, Fast Track Court No.I, Coimbatore, allowed the appeal and set aside the conviction and sentence imposed on the respondent. Aggrieved by the same, the appellant has filed the present appeal.

6. The learned counsel for the appellant contended that the appellant has proved its case to the satisfaction of the Court and it is for the respondent to rebut the presumption beyond all reasonable doubts. Execution of the cheque was a promise made under Section 25(3) of the Contract Act and it was an acknowledgment of liability. If the amount was covered even under other liability mentioned in Section 139 of the Negotiable Instruments Act, the Court has to take the aid of “shall presume” as per Section 4 of the Indian Evidence Act. Further, the burden of proving non-existence of the debt or liability was always on the respondent.

7. The learned counsel further submitted that the first appellate Court has failed to note that there was a presumption under Section 118(g) of the Negotiable Instruments Act in favour of the appellant, who was the holder of the cheque and that the

cheque received was of the nature referred to in Section 138 of the Negotiable Instruments Act for the discharge in whole or in part of any debt or any other liability and the respondent was required to dislodge the presumption under Section 139 of the Negotiable Instruments Act. Admittedly, no evidence was let in to rebut the presumption by the respondent except some ipse dixit oral evidence.

8. The learned counsel then submitted that the first appellate Court has failed to note that D.W.1 admitted the transaction under Ex.P10 and admitting the liability, the respondent issued Ex.P8 letter dated 31.3.2003. On 11.10.2004, the respondent has given a statement before the Enquiry Officer admitting the liability to pay the amount and issuance of the cheque. He would submit that the respondent had failed to issue any reply notice to the notice issued by the appellant and therefore, it was not proper on the part of the first appellate Court to give its own reasonings for acquitting the respondent. Hence, prayed for setting aside the judgment of the first appellate Court.

9.Reiterating the findings of the first appellate court, the learned counsel for the respondent submitted that the first appellate court after appreciating the oral and documentary evidence rightly set aside the conviction and sentence imposed on the respondent. Since the judgment of the first appellate court is well considered one, there is no necessity to interfere with the same and prayed for dismissal of the appeal.

10. The points that arise for consideration are:

(i) Whether there was legally enforceable debt to make liable the accused for the offence under Section 138 of the Negotiable Instruments Act?

(ii) Whether the first appellate Court was right in setting aside the judgment of the learned Magistrate made in C.C.No.504 of 2003, dated 13.9.2006?

11. According to the appellant, on 29.3.2003, the respondent had purchased 575 sarees in different categories from them on credit basis to the value of Rs.2,42,886/-, for which the respondent had issued the cheque drawn on Bank of Madurai Limited and when the said cheque was presented for encashment, the same was returned as account closed. Despite legal notice issued to the respondent, he has not repaid the same. Hence, the appellant has lodged the complaint. According to the appellant, after analysing the oral and documentary evidence, the trial Court has rightly convicted the respondent, whereas the first appellate Court has set aside the judgment of the

learned Magistrate without any valid ground. Therefore, the judgment of the first appellate court is liable to be set aside.

12. It is the say of the respondent that he was not purchased 575 sarees as alleged by the appellant on 29.3.2003 and also did not issue cheque in question in favour of the appellant. According to the respondent, he used to purchase sarees on credit basis from the year 1997 till 1999 and he had repaid the amounts due to the appellant from time to time. While purchasing the sarees on credit basis, the respondent used to give blank cheque as security for the same. After 1999, there was no business transaction between the appellant and the respondent, however, the appellant has used the blank cheque as if it was issued on 29.3.2003 for the alleged purchase of 575 sarees.

13. On the side of the respondent, it was pointed out that in his evidence, P.W.1, the Manager of the appellant admitted that there was no due from the respondent as on the date of issuance of the cheque in dispute and there was no other document to show that 575 sarees were supplied to the respondent on 29.3.2003 on credit basis by producing stock register, delivery receipt and account ledger book.

14. There was no dispute that after issuance of the alleged cheque dated 29.3.2003, an enquiry was conducted under Section 82 of the Co-operative Societies Act for the deficit stock of textile goods as well as barred debts. In his evidence, P.W.1 admitted that Ex.D1-letter was issued by him and Ex.P2-bill, the respondent was not signed. P.W.1 also admitted that respondent purchased textile goods to the value of Rs.2,42,886/- on 18.5.1998 for which the respondent had issued cheque bearing No.447955 dated 29.3.2003. In his evidence, D.W.1 stated that he had purchased 575 sarees under five invoices and the said invoices were Ex.D4 to D8 and for the above said supply, he had repaid the amount through Ex.D9 to D15 bills.

15. According to the appellant, since the respondent admitted his liability under Ex.P8-letter and Ex.P10-statement before the Enquiry Officer, it is to be presumed that the respondent had acknowledged his liability and issued the cheque in question on 29.3.2003.

16. Opposing the submission of the appellant, the respondent contended that this is not a case of acknowledgment of previous debt and the specific case of the appellant was that they have supplied 575 sarees in different categories to the respondent on 29.03.2003, for which, the respondent issued the cheque in question on the same day and therefore, there was no question of acknowledgment of previous liability.

17. Since the appellant has alleged in its complaint that the respondent issued the cheque in question for purchase of 575 sarees on credit basis, the theory of acknowledgment of previous debt does not arise. In the case on hand, the appellant has failed to prove the alleged supply of goods on credit basis by producing relevant documents and therefore, the first appellate Court was right in drawing adverse inference against the appellant.

18. There was no proof to prove that the appellant has supplied 575 sarees to the value of Rs.2,42,886/- to the respondent on credit basis on 29.3.2003 and also the cheque in question might not have been issued by the respondent on 29.03.2003, as the subsequent cheques were presented in the year 2000 itself and were encashed. In this regard, it is pertinent to note that in its judgment, the first appellate Court held thus:

> "13. .... There is no dispute regarding the fact that cheque in dispute number is 447955. On perusal of Ex.D9 statement of account of the appellant/accused we may find that subsequent cheques namely, cheque Nos.447956, 447958 and 447959 were encahsed on 1.12.2000, 4.12.2000 and 3.1.2001 and the account was closed on 3.1.2001. Since subsequent cheques were presented for collection in the year 2000, we may easily be found that cheque in dispute can not be issued in the year 2003 as alleged by the first respondent/complainant."

Thus, it is clear that the respondent has not issued the cheque in question at the relevant point of time as alleged by the appellant.

19. The learned counsel for the appellant submitted that failure to give reply to the notice issued by the appellant was one of the circumstances to draw adverse inference against the respondent. Since the appellant has failed to prove that there was legal enforceable debt on the date of issuance of cheque, the non-issuance of reply notice to the statutory notice would not in any way help the case of the appellant.

20. On over all analysis of the materials available on record, this Court finds that the cheque in question was issued by the respondent as security for the purchase of textile goods in the year 1999 and using the blank cheque, the appellant has filed the complaint against the respondent. Therefore, this

Court is of the view that there was no legal enforceable debt as on the date of the alleged issuance of cheque in question.

21. For the foregoing reasons, this Court is of the view that the first appellate Court was right in setting aside the conviction and sentence imposed on the respondent. No valid grounds have been made out to interfere with the judgment of the first appellate Court and thus, the present appeal is liable to be dismissed.

22. In the result, the criminal appeal is dismissed by confirming the order passed in C.A.No.406 of 2006 dated 03.01.2007 on the file of the learned Additional District Judge, Fast Track Court No.I, Coimbatore.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Fast Track Court No.I, Coimbatore.

2.The Judicial Magistrate No.V,
Coimbatore.

3.-Do- Through The Chief Judicial Magistrate,
Coimbatore.

Copy to

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

+1cc to Mr.N.Manokaran, Advocate Sr.59477

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srg 26/11/2018