

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.817 of 2009

Hindustan Insecticides Limited
Rep.by its Regional Sales Manager
A.Manogaran
Coimbatore.

Appellant /
Complainant

Versus

1.P.Sriram
2.P.Rajeswari

.. Respondent /
Accused 1 & 2

Prayer: Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure, to set aside the order dated 17.06.2009 made in C.C.No.117 of 2006 on the file of the learned Judicial Magistrate No.II, Coimbatore District.

For Appellant : Mr.P.Madhan

For Respondents : Mr.A.Muthukumar

J U D G M E N T

This appeal is directed against the order of acquittal dated 17.06.2009 in C.C.No.117 of 2006 on the file of the learned Judicial Magistrate No.II, Coimbatore District.

2. The appellant herein is the complainant in C.C.No.117 of 2006 on the file of the learned Judicial Magistrate No.II, Coimbatore District, he filed a complaint against the respondents for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. After concluding the trial, the learned Magistrate came to the conclusion that the appellant has not proved the case and acquitted the respondents for the charges, against which, the appeal has been preferred before this Court for convicting the respondents.

3. The case of the appellant before the trial Court, is as follows:

3.1. The complainant is a concern under Government of India Enterprises and doing business of selling insecticides and pesticides. The accused are having the business transaction with the complainant. Before issuing a cheque, a huge amount was due from the accused. Towards the payment of said due, the accused had issued a cheque in favour of the complainant for Rs.2,71,797/- bearing Sl.No.502028 dated 04.06.2005 drawn on Indian Bank, West Mambalam, Chennai [Ex.P.2].

3.2. The appellant presented the said cheque for collection on 04.06.2005 in Bank of Baroda, Main branch, Coimbatore. On 14.07.2005, the said cheque was dishonoured and returned to the complainant for the reason "funds insufficient". Therefore, on 20.07.2005, the complainant through his advocate issued a statutory notice [Ex.P.5] to the respondents to pay the cheque amount within a period of 15 days from the date of receiving the said notice. The said notice was received by the second accused on 09.08.2005. Subsequently, the same was suitably replied by the accused under Ex.P.8. The first accused has not received the said notice and hence, the same was returned on 25.07.2005.

3.3. After returning the cheque as unpaid, the complainant adopted the legal formalities stipulated in Section 138 of the Negotiable Instruments Act and filed a complaint against the respondents under Section 138 of the Negotiable Instruments Act, in Judicial Magistrate No.II, Coimbatore District.

3.4. Before the trial Court, the respondents questioned with the averments made in the complaint. The same was denied by the respondents as false and opted for trial. So, in order to prove their case, one Manoharan, who is the Sales Manager of complainant company was examined as P.W.1., besides 12 documents were exhibited as P.1 to P.12. Subsequent to that, the respondents were examined under Section 313 Cr.P.C. about the incriminating substances available in the evidence of P.W.1, for which, they pleaded not guilty. Subsequently, on the side of the respondents, 4 witnesses were examined as D.W.1 to D.W.4 and 6 documents were marked as Exs.D.1 to D.6.

3.5. After concluding the trial, the learned Judicial Magistrate No.II, Coimbatore District, came to the conclusion that the respondents are found not guilty under Section 138 of the Negotiable Instruments Act and acquitted them.

3.6. Against the said order of acquittal, now the appellant preferred this appeal praying to set aside the order and for punishing the respondents under the said offence.

4. Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.P.Madhan, learned counsel appearing for the appellant, Mr.A.Muthukumar learned counsel appearing for the respondents and also perused the records carefully.

5. The first and foremost contention raised by the learned counsel appearing for the appellant is that, the trial Judge based on the evidence given by D.W.3 [Mariappan] erroneously came to the conclusion that the respondents are not having any pre-existing liability in respect of the cheque amount and acquitted the respondents. So, the said decision arrived at by the trial Judge is liable to be set aside.

6. On the other hand, the learned counsel appearing for the respondents would submit that based on the evidence given by D.W.3, the respondents proved their case and hence, he prayed to dismiss this appeal.

7. Considering the submissions made by the learned counsels on either side, it is an admitted fact that the second respondent is the proprietor of the Firm, namely, "Vignesh Marketing". The first respondent is the power agent of the second respondent. Further, the respondents have not disputed the stipulation with regard to the limitation mentioned in Section 138-B of the Negotiable Instruments Act. So, it is not necessary to discuss whether the complaint filed before the trial Court was according to the provisions mentioned in Section 138 of the Negotiable Instruments Act.

8. Secondly, the respondents have admitted that the signature found in the cheque belongs to the first respondent. Since the signature found in the cheque was admitted by the respondents, automatically Sections 139 and 118(a) of the Negotiable Instruments Act comes into play. So, it is necessary to give an opportunity to the respondents for proving the fact that the cheque had not been issued in respect of enforceable debt.

9. In this case, on the side of the respondents, 4 witnesses were examined. D.W.3 [Mariappan] is working as a Sales Officer in the complainant company. With regard to the liability of the respondents, he stated in his chief-examination as on 30.05.2005, the complainant issued a letter to the respondents under Ex.P.10, in the said letter, a direction was given to the respondents for sending the unsold materials to "M/s.Sri Krishna & Co.", Salem. Based on the instructions, the respondents sent the unsold materials to the said Company. Further, the copy of the letter having the particulars of the direction given by

D.W.3 is marked as Ex.P.11. According to those exhibits, the property worth about Rs.45,080.77 was transferred to M/s.Sri Krishna & Co., which was run by D.W.2. D.W.2 has also admitted that he had received the unsold materials as stated by D.W.3.

10. In the said circumstances, D.W.3 categorically admitted in the chief examination itself, as on date the respondents are having the liability to pay Rs.2,07,835/- to the complainant company. He gave evidence on 20.02.2008 subsequent to the filing of this case. But in this case, the complainant stated in his proof affidavit as well as in the complaint that the respondents are liable to pay Rs.2,72,915/- as balance towards the supply of materials. In this regard, on going through the letter sent by the respondents dated 29.03.2005, it is seen that a blank cheque pertaining to this case was sent to the complainant company after filling the date as 04.06.2005.

11. Accordingly, circumstances in and around case elicited after receiving the cheque [Ex.P.2], the same was filled by the complainant for Rs.2,71,797/- instead of Rs.2,07,835/-. No doubt, Section 20 of the Negotiable Instruments Act authorises the complaint to make a presumption that the contents of the cheque is found admitted by them. However, with regard to the liability, the witnesses examined on the side of the respondents prove that the respondents are not having any liability to pay the cheque amount and they are having the liability to pay the lesser amount than the cheque amount. In a similar situation, in the judgment of Karnataka High Court in SHREYAS AGRO SERVICES PRIVATE LIMITED, BANGALORE vs. CHANDRAKUMAR, S.B. reported in 2006 CrI.L.J., 3140, it was observed as follows:-

"6..... In the case of a signed blank cheque, the drawer gives authority to the drawee to fill up the agreed liability. If the drawee were to dishonestly fill up any excess liability and the extent of liability if it becomes bona fide matter of civil dispute in such case, the drawer has no obligation to facilitate the encashment of cheque. In the instant case the reply Ex.P.40 discloses that long before presentation of cheque, the extent of liability was disputed but ignoring the objection, the company filled up the cheque for an amount not admitted by the drawer. If the accused were to prove that there is a bona fide dispute with regard to extent of liability, the dishonour of cheque under such circumstance does not attract prosecution under Section 138 of the N.I.

Act....."

12. This Court is also took the same view that the complainant approached the trial Court without clean hands and also the respondents are not having the liability to pay the cheque amount.

13. Generally, in an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. In the above said circumstances, I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

14. In the result, the Criminal Appeal fails and accordingly, the same is dismissed and the impugned order of acquittal passed by the learned Judicial M.2agistrate No.II, Coimbatore, is hereby confirmed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

at /sri
To

1.The Judicial Magistrate No.II,
Coimbatore District.

2.-do-thro The Chief Judicial Magistrate, Coimbatore

3.The Section Officer,
V.R.Section,
Madras High Court, Chennai.

+1cc to Mr.A.Muthukumar, Advocate Sr.NO.44451

SS(CO)
sm:18.9.2018

Cr1.A.No.817 of 2009