IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.04.2018
Orders Pronounced on: 11-08-2018

CORAM
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.552 of 2008

Sri Ramakrishna Mills (Coimbatore) Ltd.,
Rep.by its Assistant Manager (Yarns),
R.Rajagopal,
1493, Sathyamangalam Road,
Ganapathy, Coimbatore - 641 006. ... Appellant

Versus

1.M/s Anu Yarns,
Rep.by its partner Manikandan,
26, Pala Godown Road,
Puchakadu, Manglam Road,
Tirupur - 641 604.
2.Manikandan
3.R.Rajkumar
4.S.Balakrishnan .. Respondents

Criminal Appeal filed under Section 378(4) of Cr.P.C, to set aside the order of the learned District and Sessions Judge (Fast Track Court No.III) at Coimbatore in C.A.No.519 of 2006 , dated 05.06.2008 and to restore the order of conviction passed by the learned Judicial Magistrate No.II, Coimbatore in C.C.No.375 of 2003, dated 15.11.2006.

For Appellant : Mr. S. Baaskaran, for M/s.Ram and Ram.
For Respondent : No Appearance

JUDGMENT

This Criminal Appeal is filed to set aside the Judgment dated 05.06.2008 passed in C.A.No.519 of 2006 on the file of learned District and Sessions Judge (Fast Track Court No.III) at Coimbatore and to restore the order of conviction passed by the learned Judicial Magistrate No.II, Coimbatore in C.C.No.375 of 2003, dated 15.11.2006.

2. This Appeal is filed against the Judgment of acquittal of the respondents by the Appellate Court. The private complainant is the appellant herein.

3. The private complainant/appellant herein has preferred the complaint under Section 138 of The Negotiable Instruments Act, which was taken on file in C.C.No.375 of 2013. Originally, C.C. No. 375 of 2003 was instituted against five accused. The fifth accused in the complaint was M/s. Shanthi Textiles private limted. On receipt of summons, the fifth accused filed Crl.OP No. 25699 of 2003 before this Court to quash the private complaint against them and it was allowed by this Court on 29.09.2003 in Crl.O.P.No.25699 of 2003. Therefore, the trial in the private complaint proceeded against the four accused, who are the respondents herein.

4. After trial, the learned Judicial Magistrate II, Coimbatore, found the accused 1 to 4 guilty of the offence punishable under Section 138 of The Negotiable Instruments Act. As the first accused is a firm, the trial Court sentenced the first accused to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment of one month. A-2 to A-4 were sentenced to undergo simple imprisonment for a period of six months each and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for one month each.

5. Aggrieved by the conviction and sentence of the trial court, the accused have filed Crl.A.No.519 of 2006 and the First Appellate Court allowed the appeal and the respondents/A1 to A4 were acquitted of all the charges, hence, this criminal appeal is by the appellant/complainant.

6. The brief facts of the case which led to the above appeal are as follows:

> " (a) Ramakrishna Mills (Coimbatore) Ltd., the appellant herein and the complainant in C.C.No.375 of 2003 before the learned Judicial Magistrate No.III, Coimbatore is a Public Llimited Company incorporated under the Companies Act,1956.
>
> (b) One Mr. Manoharan was appointed as the Authorized Representative of the said company.
>
> (c) The said Manoharan left the company and another Resolution was passed in order to appoint Mr.Rajagopal as Authorized Representative.
>
> (d) One M/s.Anu Yarns (A-1) is a Partnership firm and A-2 to A-4 are the Partners of the said firm.
>
> (e) One Shanti Mills Pvt., Ltd., (A-5 in the complaint) had business transactions with the complainant company by purchasing various types of

yarns and as on 3rd October 2002, a sum of Rs.27,41,015/- (Rupees Twenty Seven Lakhs Forty One Thousand and Fifteen only) was outstanding amount payable by A-5.

(f) M/s.Anu Yarns (A-1) a sister concern of M/s. Shanti Mills Pvt., Ltd., (A-5) issued three cheques in order to discharge the liability of A-5. The cheque details are as follows:

Cheque No.	Date	Sum
(i) 423585	16.09.2002	8,88,669/-
(ii) 423856	20.09.2002	8,28,120/-
(iii) 423857	25.09.2002	8,26,513/-

(g) All the above said three cheques when presented by the complainant were dishonoured on account of "Funds Insufficient" vide Cheque Return Memorandum dated 25.10.2002.

(h) A legal notice dated 9th November 2002 was sent by the complainant, calling the accused to discharge the liability. The notice was returned on 12th November 2002 with an endorsement "Intimation given".

(i) As the accused failed to pay the amount as demanded in the legal notice, the complainant company filed the complaint for an offence under Section 138 of the Negotiable Instruments Act through its Authorized Representative, Mr.Manoharan before the Judicial Magistrate No.III, Coimbatore."

7. Before the Trial Court, on the side of the Complainant, Mr. Manoharan, authorised representative examined himself as PW1 and Exs. P1 to P17 were marked. On the side of the respondents/accused, DW1 and DW2 were examined, but no documents were marked. The Trial Magistrate held that since the respondents have not produced any document to show that they have settled the amount payable by the fifth accused to the complainant and upon comparision of the signature in Ex.P17, statement of account with the cheques in question, concluded that the accused are guilty of the offence and thereby convicted them.

8. On a perusal of the Trial Court's Judgement, the Sessions Court has commented upon the Judgment passed by the trial Court. By placing reliance on the order passed by this

Court on Crl.OP No. 25699 of 2003 dated 29.09.2003 filed by the fifth accused in the complaint, the Sessions Court concluded that as per the said order dated 29.09.2003, there is no connection between the fifth accused in the complaint and the cheques in question. Further, the complainant has not filed any appeal as against the order dated 29.09.2003 passed in Crl.OP No. 25699 of 2003. The appellate Court also, on perusal of the evidence of PW1 concluded that PW1 himself has stated that there is no nexus or connection between the complainant and the respondents 1 to 4. Further, the Trial Court had taken pains to compare the signature of the fourth accused with the signature contained in Ex.P17 without providing opportunity to compare and prove the signature in a manner known to law. Accordingly, the Appellate Court allowed the appeal filed by the respondents herein.

9. The learned counsel for the appellant contended that the Lower Appellate Court has committed an error in not accepting Ex.P17. Further, the First Appellate Court overlooked the evidence of PW1 while allowing the appeal.

10. The appellant herein has come forward with the specific case that in respect of business transactions they had with the fifth accused, M/s.Shanthi Mills, which is a Sister concern of A1, and while some amount were to be paid by M/s. Shanthi Mills to the complainant to the tune of Rs.27,41,105/- and forwards the said amount, on the instructions of the fifth accused, the first accused/partnership firm has issued cheques, Ex.P4 and Ex. P6. On presentation, the same were returned by stating that there are 'insufficient funds' in the account, hence, the complaint.

11. The suggestive case of the respondents/accused 1 to 4 is that the complainant company is a total stranger to them. The respondents 1 to 4 have not handed over any cheque to them towards any legally enforceable debt or liability. The fourth accused was not the partner of the partnership firm as on the date of issuance of the cheques. In this regard, reliance was place on the deposition of PW2 and DW1 clearly indicate that on the date of issuance of cheque the fourth respondent/fourth accused was not a partner of the first accused firm.

12. As cited supra, the case of the respondents / accused is that the accused company had no business transactions with the complainant company. It is their case that one Guruswamy, shareholder of the Chamber of Cotton Textiles is the broker for supply of yarn to the fifth accused company and Ex.P3 clearly indicates the supply of yarn made through the said broker only. It was also admitted by PW1 that the said broker has filed criminal complaint for cheating pertaining to the business transaction mentioned in the complaint. PW1 also admits

that the criminal complaint is pending. In the cross-examination, PW1 admits that the complainant company has recovered from the broker various properties including cash, however, he denied the same during cross-examination. Therefore, a Petition in CMP No. 5209 of 2006 was filed by the respondents/accused under Section 91 of Cr.P.C. to sent for the acknowledgment of recovery of the valuables recovered through the said broker in Crime No.4 of 2002 on the file of Central Crime Branch, Tirupur but the said petition was dismissed. The Lower Appellate Court has rightly considered the above aspects and set aside the order passed by the trial Court.

13. The Trial Court, in my considered view, has erroneously convicted the respondents 1 to 4 herein without properly appreciating the evidence on record. It appears that Criminal miscellaneous petition was filed under Section 311 of the Code of Criminal Procedure Code to recall the PW1 for re-examination through whom Ex.P17 was marked to show as if the cheque was given to the appellant/ private complainant towards a legally enforceable debt, at the instance of the fifth accused. It is to be noted that during cross examination, (after marking of Ex.P17) the signature in Ex.P17 was specifically denied by the respondents herein. It appears that respondents also filed Crl.MP.No.5208 of 2006 to send the signature found in the Ex.P17 with that of the admitted signature, however, for the reasons best known, the trial Court had rejected the said petition. No doubt, it is true that there is no appeal against filed by the accused herein as against the said order.

14. The sheet anchor of the suggestive case of the respondents 1 to 4 is that they have taken steps to compare the document at an initial stage, but it was dismissed by the trial court. Furthermore, with regard to the proof of evidence of signature in Ex.P17, is not reliable, because, the signature of fourth accused is specifically denied and furthermore Ex.P17 was marked after closing of the complainant side evidence and by recalling PW1 after one year that too without any whisper anything in the earlier pleadings assumes significance. Further, there is no whisper about Ex.P17 in the legal notice, complaint or in the earlier part of examination of PW1. In fact PW1 was specifically confronted with regard to the availability of any letter or any document evidencing the issuance of cheque in question issued by the first accused for and on behalf of the fifth accused, but PW1 denied the same. However, it appears, after completion of examination of witness on the side of the complainant, the defendants side witnesses DW1 and DW2 were examined. At that time, the matter was posted for argument and by way of recall petition PW1 re-entered into the witness box and marked Ex.P17. It caused very serious doubts as to the genuineness and veracity of the said document. It remains stood that immediately after marking all the documents a specific

question has been put before the PW1 and also having made necessary application and to sent for the comparison of the signature found in Ex.P17 with the admitted said signature of the accused. However, the reason best known, trial Court dismissed the petition. Besides, it seems to have taken the pain in comparing the signature in Ex.P17 with the admitted signature, on his own. Such attitude adopted by the trial Magistrate in comparing the signature which is hereby deprecated.

15. Considering the marking at document at later point of time, the existence which, were never spoken to or there is any whisper either in Ex.P1 Advocate notice, which was said to have been issued immediately after dishonour of cheque and thereafter nothing was whispered after reply notice and nor even anything in the Chief examination at the first instance and having admitted (in the cross examination) they have not marked any document evidencing such arrangement as alleged between the fifth accused and the present first accused, the Lower Appellate Court was right in entertaining a suspicion created over Ex.P17 and rightly held Ex.P17 is to be eschewed from consideration. Such a finding rendered by the first Appellate Court is well considered and does not any warrant to interference at this appellate stage.

16. After perusing the deposition of PW1 in the first instance and answer elicited in the cross examination and also in the further examination in Chief, after recall and Ex.P17, this Court is of the considered view that the first appellate Court is right in entertaining a suspicion with respect to the coming into existence of Ex.P17, which has not been whispered at the earlier point of time but only at the conclusion of the Trial Court. Thus, taking into consideration of Ex.P17, the first Appellate Court has rightly held that there is no proper explanation with respect to liability between the A1 and A5 alleged therein and for the debt due by A-5, A1 has issued the cheque in question. Such a finding by Sessions Judge is well considered and well merited and does not call for any interferrence. Thus, the acquittal order passed by the learned District and Sessions Judge (Fast Track Court No.III) at Coimbatore need not be interfered with and it is hereby confirmed and the complaint stands dismissed. The Criminal Appeal is therefore dismissed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge
   Fast Track Court No.III
   Coimbatore.

2. The Judicial Magistrate II
   Coimbatore.

Crl.A. No. 552 of 2008

SS(CO)
SP(29/08/2018)