IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.531 of 2007

M/s.Mowin Enterprises
235 Vivekananda Road,
Ramnagar, Coimbatore-641 009.
Represented by its
Manager Mr.P.G.Sajeev,
S/o. P.G.Nair ... Appellant / Complainant

Vs

1. M/s.Tyre Tech
A 140 1st Floor Housing Unit Phase-II,
SIDCO Post,
Coimbatore-641 021.

2. Mrs.Hyruniza ... Respondents / Accused

Prayer : This Criminal Appeal is filed under Section 378 of Cr.P.C., against the Acquittal under Section 255 Cr.P.C. made in S.T.C.No.1602 of 2004 dated 20.01.2007 by the learned Judicial Magistrate No.VII, Coimbatore.

For Appellant : Mr.S.Sellathirumagan
For Respondents: Mr.S.Sutharshan
for Mr.P.R.Balasubramanian

JUDGMENT

The appellant is the complainant before the learned Judicial Magistrate No.VII, Coimbatore. As against the order of acquittal of the respondents/accused 1 and 3, the present appeal is filed.

2. The appellant company is a partnership firm under the Indian Partnership Act, having office at 235 Vivekananda Road, Ramnagar, Coimbatore-641 009. The 1st accused company is also a partnership firm is having its office at Nehru College Road, Malumachampatti, Coimbatore. The complainant is dealing with a Carbon Black amongst other products. The accused No.2 and 3 are having business transaction with the complainant company.

Accordingly, the accused No.1, represented by 2 and 3 have purchased carbon black from the complainant under Invoice No.104, dated 02.09.2003 for a sum of Rs.2,06,194/-(Rupees Two Lakhs Six Thousand One Hundred and Ninety Four Only). The said business transaction were negotiated by accused No.2 and 3 and they promised to make payment within 30 days. When the complainant demanded for payment of the above said amount, the accused No.2 on behalf of accused No.3 had issued a cheque bearing No.305239 dated 12.12.2003 drawn on State Bank of India, SIDCO Industrial Estate, Coimbatore-21 for a sum of Rs.2,06,194/- towards discharge of their debt liability under Invoice No.104 dated 02.09.2003. The cheque was presented by the complainant in Vijaya Bank, Dr.Nanjappa Road, Coimbatore for collection on 12.12.2003. The cheque was returned with an endorsement ''Insufficient Funds''. The said intimation was communicated by its banker vide return memo dated 15.12.2003.

3. Thereafter, the complainant company sent a legal notice dated 06.01.2004 to the 1st respondent's office and the said legal notice was returned with postal endorsement ''company lock out'' on 10.01.2004. Accused No.2 who is the husband of accused No.3 received the statutory notice on the same address. Therefore, the accused No.3/2nd respondent herein has wilfully refused to receive the statutory notice. Accused No.2 having received the notice has sent a reply notice through his counsel on 20.01.2004 with false and baseless allegation. In the reply notice, the 2nd accused denied the plea made under Invoice No.104 dated 02.09.2003. Accordingly, there is no business transaction in between the complainant company and the 2nd accused as the Company was dissolved as early as on 05.02.2003. However, due to earlier business transaction, cheque was mis used by the complainant and filed the complaint and Accused No.3/2nd respondent herein have nothing to do with the above allegation.

4. After perusal of the evidence and documents, the lower court dismissed the complaint and as against the order of acquittal, the present appeal has been filed by the appellant.

5. The learned counsel for the appellant would submit that though the complainant has not filed the deed of partnership before the lower court, the 2nd accused has issued a cheque on behalf of the accused Nos.1 and 3 with a sole intention to defraud the complainant having known that there was no sufficient funds in the firm's account to honour the cheque. Hence, A1 to A3 are liable to be punished under Sections 138 and 141 of Negotiable Instruments Act.

6. While being the case the 2nd accused passed away. The 2nd respondent, wife of 2nd accused is a partner whether the company was extended at the time of issuing the cheque and whether the

2nd accused is liable to be prosecuted under the criminal case.

7. The learned counsel for the respondents would submit that though in cross-examination, the 3rd accused/2nd respondent herein admitted that she was a partner in the 1st accused Company, however, the company was dissolved as early as on 05.02.2003. However, the complainant filed a complaint as if the cheque was issued on 12.12.2003, when the company is not in existence. At the relevant point of time the 2nd accused was not the Director of the Company. Once the company was dissolved, there is no justification to proceed under Section 138 of Negotiable Instruments Act. Hence, the complaint itself against the wrong person and the same is not maintainable.

8. Heard both sides.

9. The main issue involved in this case is whether the 3rd accused is liable to be prosecuted under Section 138 of Negotiable Instruments Act. However, there is no partnership deed produced before the lower court. In her cross-examination, the 3rd accused deposed that she is one of the partner in the company till 05.02.2003. However, the complainant filed a complaint as if the cheque was issued on 12.12.2003, when the company is not in existence. At the relevant point of time the 2nd accused was not the Director of the Company. Once the company was dissolved, there is no jurisdictional person available to proceed under Section 138 of Negotiable Instruments Act.

10. Admittedly, the cheque was issued on 12.12.2003, after dissolving of the company. In these circumstances, this Court is not inclined to interfere with the order of the lower court. Accordingly, this Criminal Appeal is dismissed. The order dated 20.01.2007 made in S.T.C.No.1602 of 2004 by the learned Judicial Magistrate No.VII, Coimbatore is confirmed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssn

To

The Judicial Magistrate No.VII,
Coimbatore.

+1cc to Mr.P.R.Balasubramanian, Advocate, S.R.No.39870

+1cc to Mr.S.Sellathirumagan, Advocate, S.R.No.39967

Crl.A.No.531 of 2007

NM(CO)
GSP(02/08/2018)