

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.04.2018

Coram

THE HON'BLE MR. JUSTICE G.R.SWAMINATHAN

CRIMINAL APPEAL NO. 1004 OF 2002 & 1005 of 2002

M/s. Golecha Global Finance

Limited, rep by its director Uma Mageswari

134, Santhome High Road,

Madras – 4.

... Appellant in both appeals

Versus

1. Arun Shah

..... Respondent in Crl.A.No.1004 of 2001

1. Arun Shah Udyog Polypack Pvt. Ltd.,

by its Director Arun Sha,

4/6, Mamtha Complex, 2nd floor,

13, Whites Road, Royapettah,

MAdras -14.

2. ArunShah

3. Deepa Shah

..... Respondents in Crl.A.No.1005 of 2001

COMMON PRAYER:

These Criminal Appeals have been filed under Section 378(2) of code of Criminal Procedure to set aside the order in C.C.Nos. 810/98 and 811/98 on the file of XIII Metropolitan Magistrate Court, Egmore dated 29.08.2001.

(In both appeals)

For Appellant

:No appearance

For Respondents

: No appearance

COMMON J U D G M E N T

The appellant is the complainant in these appeals. The complainant M/s. Golecha Global Finance has filed C.C.Nos.810 and 811 of 1988 on the file of XIII Metropolitan Magistrate Court, Egmore dated 29.08.2001 against the respondent Arun Shah. On the complainant side, two witnesses were examined and Exhibits P1 to P10 were marked. On the side of the accused no witnesses were examined and no documents were marked.

2.The Trial Magistrate acquitted the accused by Judgment dated 29.08.2001 for the sole reason that the seal of the complainant company is not found in the complaint in question. This is the sole ground for acquitting. The complainant aggrieved against the same filed this appeal.

3.There is no appearance for the complainant as wells as to the respondents.

4.This Court went through the materials on record and it is seen that in the cause title it has been mentioned that the complainant is represented by its Managing Director. It is also seen that the Managing Director has only signed in the complaint. It is true that the seal of the complainant company is not found but it is only a procedural omission. On this ground, the Trial Magistrate ought not to have acquitted the accused.

5. The object of incorporating Section 138 of the Negotiable Instruments Act in the statutory book is to ensure that the cheque of instrument carries greater creditability. The specific case of the complainant is that the cheque in question was issued by the competent authority or not. When the Trial Court ought to have seen that the cheque was issued by the legally empowered person, it should have also ought to have seen that all other procedures are compiled with and Trial Court should further seen that mandatory things are being carried out in the complaint before rendering the Judgment and as such there is no authorisation letter by the corporation as they have issued the cheque.

5. This Court is inclined to set aside the impugned Judgment passed by the Trial Court as there are no merits in the matter and this Court has not heard the submissions by both the counsels. Hence the matter is remitted back to the Trial Magistrate to be disposed of in accordance with law.

6. The Trial Court shall issue notice to both the parties and dispose the matter after hearing their submissions. The Registry is directed to send all Original records to the File of the Trial Court as expeditiously as possible.

With the above observation these appeal are allowed.

21.04.2018

Speaking/Non Speaking Order

Index: Yes/No

Internet: Yes/No

smn

To

The XIII Metropolitan Magistrate Court, Egmore

CRL.A. NO. 1005 OF 2002



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