

IN THE HIGH COURT OF JUDICATURE AT MADRAS

25.08.2018

CORAM

THE HONOURABLE DR. JUSTICE G.R.SWAMINATHAN

Crl.A.Nos.79, 88, 89 and 90 of 2007

Tamil Nadu Newsprint and Papers Limited
67, Mount Road,
Guindy,
Chennai-600 032.
Its rep. by Authorised signatory
Mr.Paramasweran
S.O.(Legal)

....Appellant/Respondent/Complainant
(in all Criminal Appeals)

Vs.

1. M/s.Nayagara Industries Limited,
Rep. by its Managing Director,
Mr.K.V.Reddy,
8-2-378/R/8, Road No.2,
Banjara Hills,
Hyderabad-500 052.
2. Mr.K.V.Reddy,
Managing Director,
M/s. Nayagara Industries Limited,
8-2-378/R/8, Road No.2,
Banjara Hills,
Hyderabad-500 052.

...Petitioner/Accused
(in all Criminal Appeals)

Prayer:- The Criminal Appeal No.79 of 2007 has been filed under Section 378 of Cr.P.C., to set aside the order dated 24.03.2004 made in Crl.A.No.256 of 2002 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Chennai, against in CC. No.134 of 2000 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai.

Prayer:- The Criminal Appeal No.88 of 2007 has been filed under Section 378 of Cr.P.C., to set aside the order dated 24.03.2004 made in Crl.A.No.255 of 2002 on the file of the Additional

District and Sessions Court, Fast Track Court No.IV, Chennai in CC.No.133 of 2000 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai.

Prayer :- The Criminal Appeal No.89 of 2007 has been filed under Section 378 of Cr.P.C., to set aside the order dated 24.03.2004 made in Crl.A.No.257 of 2002 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Chennai in CC.No.135 of 2000 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai.

Prayer:- The Criminal Appeal No.90 of 2007 has been filed under Section 378 of Cr.P.C., to allow the appeal and set aside the order dated 24.03.2004 passed by the Hon'ble Additional District and Sessions Court, Fast Track Court No.IV, Chennai in Crl.A.No.254 of 2002 in CC.No.132 of 2000 on the file of the Hon'ble IX MM Saidapet, Chennai.

For Appellant : Mr.K.Balamurali
for Mr.Shivakumar (in all Crl.As.)

For Respondents: Mrs.L.Srilekha
Legal-aid-counsel

COMMON JUDGMENT

The appellant in the four appeals is Tamil Nadu News Print and Papers Limited, (TNPL) Chennai. It had supplied Newsprint to M/s.Nayagara Industries Limited, Hyderabad in the year 1999. The said company issued as many as 16 cheques in favour of TNPL for a sum of Rs.19,40,000/- All the cheques issued by the said Company were presented for collection by TNPL. All the cheques were dishonored. The TNPL thereupon issued a statutory notice under Section 138 of the Negotiable Instruments Act, 1881, calling upon the said Company to pay the cheque amount within a period of 15 days from the date of receipt of a copy of the notice. But, there was no response for the said notices, nor the cheque amounts were paid.

2. Therefore, the Appellant herein filed complaints which were taken on file in C.C.Nos.134, 133, 135 and 132 of 2000 on the file of the learned IX Metropolitan Magistrate Court, Saidapet, Chennai. The Appellant as the complainant examined PW1, PW2 and PW3. The drawer Company as well as its Managing Director were made as accused. The Accused cross examined, the witnesses in extenso. On the said of the accused no evidence was let in. The learned trial Magistrate by judgment dated 23.08.2002 found the accused guilty of the offence under Section 138 read with 141 of the Negotiable Instruments Act and

sentenced the two accused to undergo six months simple imprisonment and directed them to pay the cheque amount as compensation and default sentence was also imposed.

3. Aggrieved by the judgment of the learned trial Magistrate convicting and sentencing them, the accused preferred C.A.Nos. 254, 255, 256 and 257 before the IV Additional Sessions Judge/Fast Track Court, Chennai. Before the First Appellate Court, the accused took a plea that they had replaced the signed blank cheques with demand drafts and that no amount was due and payable by them. This plea was accepted by the lower Appellate Court and the judgment passed by the learned trial Court Magistrate was reversed.

4. Questioning the reversal of the judgment of the trial Court and acquittal of the accused, these appeals were preferred by the complainant. The accused were served with notices in these four appeals. One Mohideen originally appeared before this Court and undertook to file vakalat. But, during the subsequent hearing dates, he was not present. Therefore, this Court had appointed Mrs. L.Srilekha as legal-aid-Counsel for the accused. Thereafter, the said Mohideen once again appeared before this Court and the appointment of Mrs.L.Srileka, Legal-aid-Counsel was canceled and the accused was directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as fees to Mrs.L.Srilekha. Thereafter, neither any fees was paid, nor fresh vakalat was filed, nor Mr.Mohideen appeared before this Court. The matter is once again posted before this Court.

5. I am of the view that this Court cannot indefinitely wait for the counsel Mohideen to appear. Therefore, this Court restores the appointment of Mrs.L.Srilekha as Legal-aid-Counsel to represent the accused. The Legal Services Authority is directed to pay a sum of Rs.5,000/- to Mrs.L. Srilekha within a period of three weeks from the date of receipt of a copy of this order.

6. Heard, the learned counsel on either side.

7. The learned counsel for the appellant pointed out that during the pendency of these appeal proceedings, settlement was entered into between the parties on 15.10.2012, and it was assured that the accused would pay a sum of Rs.72,00,000/- in full quit towards full and final settlement, to the complainant and towards substantial enforcement of the said obligation set out in the said agreement, a sum of Rs.57,00,000/- had already been paid by the accused and what remains to be paid is only Rs.15,00,000/-. Therefore, this Court is entitled to take notice of this subsequent development. The fact that agreement was

entered into during the pendency of these appeal proceedings and that a substantial sum of Rs.57,00,000/- was paid by the accused to the complainant itself, indicate that the cheques were issued towards enforceable liability. The plea taken before the Appellate Court was false.

8. The learned counsel for the appellant has rightly pointed out that the trial Court, during the cross examination of PW1, the accused did not suggest that demand drafts were given in replacement of the cheques. Therefore, I am inclined to set-aside the judgment of the first Appellate Court and restore the judgment of the learned trial Magistrate.

9. At this juncture, the legal-aid-counsel appointed for the accused submitted that since the accused had discharged a substantial portion of the obligation and compromise has been arrived at between the parties, this Court may show indulgence in the matter of sentence and also pointed out that this Court would not be justified in imposing the sentence on the accused. I find considerable force in the submission of the learned counsel representing the accused. Therefore, this Court directs the accused to pay a sum of Rs.15,00,000/- in four installments as compensation of Rs.4,00,000/-, Rs.4,00,000/-, Rs.4,00,000/- and Rs.3,00,000/- (Rs.15,00,000/-) within a period of four months from the date of receipt of a copy of this order. If the accused do not pay the said compensation amount within the said period, the two accused will have to undergo default sentence of eight months, and the sentences will run-concurrently.

10. All these Appeals are allowed in the above terms.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

WEB COPY

To

1. The Additional District and Sessions Court,
IV-Fast Track Court, Chennai.
2. The IX Metropolitan Magistrate
Saidapet, Chennai.

3. The Secretary,
Legal Services Authority,
High Court Building, Chennai.
 4. The Public Prosecutor,
High Court, Madras.
 5. The Chief Metropolitan Magistrate,
Egmore, Chennai.
 6. The Section Officer, Criminal Section,
High Court, Madras.
 7. M/s.Nayagara Industries Limited,
Rep. by its Managing Director,
Mr.K.V.Reddy,
8-2-378/R/8, Road No.2,
Banjara Hills, Hyderabad-500 052.
 8. Mr.K.V.Reddy,
Managing Director,
M/s. Nayagara Industries Limited,
8-2-378/R/8, Road No.2,
Banjara Hills, Hyderabad-500 052.
 9. The Director General of Police,
Mylapore, Chennai 4.
- +1 cc to M/s.Shivakumar, Advocate Sr.No.58428

CSL/26.12.2018

Crl.A.Nos.79, 88, 89 and 90 of 2007

सत्यमेव जयते

WEB COPY