IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 09.04.2018]

[Pronounced on : 10.08.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.970 of 2006

M/s.Rajashree Cottons
Rep.by its Powerholder,
Mr.Sathyanarayanan
having buniess at
No.1110 A Cotton Market
Rajapalayam, Tamil Nadu ... Appellant/Complainant

.. Vs ..

1.Jayanarayana Sarda
Prop.M/s.S.R.Sarala & Company
5/3301 "Sarda Nikethan"
Tilak I Challkaranchi
Kolapur District
Maharashtra - 416 115

2.Shyamsundar Sarda
Authorized Signatory
M/s.S.R.Sarda & Company
1238, Mill Road,
Coimbatore - 1 ... Respondents/Accused

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment made in C.C.No.797 of 2003 on the file of learned Judicial Magistrate No.V, Coimbatore, on 28.08.2006 acquitting the accused for the offences under Section 138 of Negotiable Instruments Act.



For Appellant : M/s.N.Premalatha
For M/s.C.D.Johnson
For Respondent : No appearance
(notice unserved - person not found)

JUDGMENT

The Complainant is the appellant herein.

2. The appellant/complainant filed a private complaint alleged commission of offence under Section 138 of Negotiable Instruments Act and after observing the formalities, the case was taken as C.C.No.797 of 2003, on the file of the learned Judicial Magistrate No.V, Coimbatore and after trial, the respondents/accused was acquitted and hence, this appeal.

3. The appellant/complainant has preferred a private complaint alleging that in connection with the sale of cotton at the instance of the first accused, the second accused issued a cheque for Rs.7,00,000/-, dated 18.01.2003, HDFC Bank Limited, Trichy Road Branch, Coimbatore and on deposit, the same was returned as stop payment instructed by the respondent herein and after issuing the notice, he filed the private complaint.

4. The suggestive case of the respondent/accused is that the petition filed by the power of attorney is not maintainable. As such, the power of attorney appointed by the Managing Director of the complainant's company is not maintainable-in-law and there is no business transaction between the appellant and the respondent as alleged and also stated that the respondent are herein engaged in collection agent and the representative of the complainant company came to the Gujarat and gave a cheque for Rs.7,00,700/- for collection for which, respondents have issued the cheque Rs.7,00,000/- and thereafter, the representative of the complainant has came received back his cheque for Rs.7,00,700/- on enquiry about their cheque for Rs.7,00,000/- he has instructed to give stop payment and further stated on the date of the issuance of the stop payment of instruction, an amount of balance of Rs.1,24,46,376.07/- was on credit on the account of the accused company.

5. During the cross-examination of the P.W.1, it is elicited by the respondent/accused that the power agent was given only in respect of M/s.Rajalakshmi Spinners agent Jayanarayana Sarda, Prop. M/s.S.R.Sarala & Company to take action against the said enterprises only. However, by way of insertion, the M/s.Sarala & Company has been inserted and the same was admitted by the P.W.1 in the cross-examination and further it is only the Managing Director of the Private Limited Company has given the power agent to institute the complaint and not the entire Directors of the Private Limited Company and in the cross- examination, it is elicited that for the alleged supply of cotton to the tune of Rs.7,00,000/- documents receipts and invoices evidencing such business transaction between the complainant and the said Company are in possession of the P.W.1.

But, he is not produced the same and hence, the trial Court has drawn the adverse interference in view of admitted factum that their possession especially, in the light of the suggestive case as stated above.

6. Furthermore, even immediately, after the issuance of Ex.P4 legal notice, the respondent has issued a reply notice under Ex.B1 as early as on 10.02.2003 wherein similar fact as projected as a defense case has been duly reflected in the reply notice. However, neither in the complaint nor in the evidence of the P.W.1, the alleged reply of the respondent/accused has been reflected and trial Court has drawn the adverse interference on the attitude of the petitioner. Furthermore, taking note of the fact that on the date of the issuance of stop payment more than one crore is found to be in the account of the accused Company as per the Exhibit R4 and Exhibit R5 and hence, held that the case of the private complainant is found to be improbable and rejected the complaint.

7. The learned counsel for the appellant would submit that the signature in the chequre having been accepted by the respondent/accused them the presumption arises in their favour and the trial Court has not properly appraised the same and further contended that the trial Court ought not to have drawn adverse interference for the non-production of the alleged business transaction document receipts and vouchers and prayed for setting aside the order.

7. After perusing the documents and after analyzing the evidence of the P.W.1 and the admission in the cross-examination, they are to the effect that, in the power of attorney given by the private complainant in Ex.P1, it was given only in respect of M/s.Swastik Yarn Enterprises Limited and to take action another Company Limited wherein the name of M/s.S.R.Sarala & Company was inserted by way of ink and the said fact was admitted by the P.W.1 and thus in the absence of non-examination any of the Directors as to whether the power of attorney agent was given to the present power agent (P.W.1) under Exhibit P1 also covers the respondent case or not cannot be inferred and hence, the trial Court has rightly commented upon the said insertion and corrections held that the power deed is not maintainable, in view of the defects in the power deed as noted above. Furthermore, it appears that Ex.P1 power deed is also executed only by the Managing Director and not by the other Directors and hence on both the grounds, the trial Court has rightly come to the conclusion that Ex.P1 Power Deed is defective nature and prosecution launched against the respondent/accused is not maintainable.

8. The respondent/accused has clearly demonstrated his

suggestive case that they are engaged only as a collection agent and the representative of the appellant herein gave a cheque for Rs.7,00,700/- for the collection of Rs.7,00,000/- for which, the accused has given a cheque for Rs.7,00,000/- payable at Coimbatore. Subsequently, the representative came and collected back his cheque and them it appears that the accused has demanded for his cheque. As instructed by complainant representative he has given instruction for stop payment of the cheque and further, he has also marked Ex.R1 reply notice which is issued immediately on the receipt of the Ex.P5 legal notice wherein the entire suggestion case has been duly narrated assumes significance.

9. Furthermore, for the reasons best known, the appellant have suppressed the issuance and receipt of reply notice Ex.R1, dated 10.02.2003 in the private complaint and the P.W.1 has not whispered anything regarding the said Ex.R1 reply notice which was given as early as on 10.02.2003 and thus suppression under Ex.R1 also created serious cloud of suspension over the attitude of the appellant herein. Furthermore, on the date of giving instruction of stop payment by the accused/respondent, he had clearly demonstrated before the trial Court that on his account there was more than one crore rupees to his credit in his account forces this Court to hold that suggestive case is more probable.

10. Furthermore, it is a specific case of the private complainant/appellant that due to the business transaction, for supply of cotton, the cheque-in-issue was given by the respondent. Though, the P.W.1 as stated to substantiate the said plea of alleged business transaction between the parties receipts and vouchers, document are available with him, but he has not produced before the trial Court and thus, I find that the non-production of the alleged document with regard to the alleged transaction, the trial Court is quite right in drawing adverse interference against the appellant and the same cannot be found fault with and thus on entirety of the circumstances, the suggestive case of the defendants as reflected under Ex.R1 has been issued as early as on 10.02.2013, immediately after the legal notice issued under Ex.P5, dated 4.2.2003 and non-production of documents relating to the alleged business transaction, non-production of documents receipts and invoices regarding alleged transaction coupled with a fact that Ex.P1 Power Deed is found to be defective, consequently make the appellant case more improbable and unbelievable.

11. For the reasons stated supra and also on the date of the issuance of stop payment by the respondent/accused is having a amount to the tune of more than one crore, the trial Court quite right in holding that respondent has sufficient

funds in his account and thereby order acquittal of the respondent herein and thus, the said finding does not call for any interference as the same does not suffer from any irregularity or illegality and the order of trial Court in the ordering of acquittal by the appellant is hereby confirmed.

11. Accordingly, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

nvi

To

1.The Judicial Magistrate No.V, Coimbatore

2.-Do-Thro'The chief Judicial Magistrate,
Coimbatore.

3.The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.970 of 2006

KJI(CO)
RMP(03/10/2018)