

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.1822 of 2002

A.Sekar

...

Appellant/Complainant

Vs

1.M/s.Golden Impex,
Rep. by Managing Partner,
Ramasamy, S/o Paramasivam

2.Ramasamy

3.Akayarkani ... Respondents/Accused

Prayer: Criminal Appeal filed under Section 378(4) of the Criminal Procedure Code, against the Judgment dated 20.09.2002 in C.C.No.14 of 1999 on the file of Judicial Magistrate No.III, Salem, acquitting the respondents in proceedings arising out of a complaint given by the Appellant herein against the respondent herein in respect of an offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.V.Srinivasan

For Respondents: No Appearance

JUDGMENT

This criminal appeal is preferred by the appellant against the acquittal order dated 20.09.2002 in C.C.No.14 of 1999 on the file of the learned Judicial Magistrate No.III, Salem.

2.Brief case of the appellant is that

The facts of the case is the respondent borrowed a sum of Rs.4,28,920/- from the appellant/complainant and issued a post-dated cheque for the amount of Rs.4,28,920/- for business transactions to the appellant. The appellant deposited the said cheque for collection in Tamil Nadu Mercantile Bank, Pollachi. But the same was dishonoured with return memo on 19.11.1998 noted with "insufficient funds". The appellant/complainant issued statutory legal notice to the respondent on 07.12.1998 and the same was received by the respondent and failed to repay

the loan amount. Hence, the appellant filed complaint.

3. During the trial, the appellant witnesses examined as PWs 1 to 3 and Exhibits-P1 to P18 were marked. The respondent witnesses examined as DW1 and DW2 and Exhibits-1 to 18 were marked.

4. On completion of the trial, the acquittal order passed by the learned Judicial Magistrate No.III, Salem. Aggrieved over the acquittal, the appellant filed this criminal appeal.

5. The learned counsel for the appellant submits that the learned judge ought to have seen that it is not in dispute the cheque bears the signature of the accused and that it has not been satisfactorily established by the accused that the cheque viz Ex-A7 was not issued in discharge of legally recoverable debt or other liability.

6. The learned counsel for the appellant submits that the learned judge gravely erred in placing reliance on Ex.B17 and Ex.B18 to reject the case of the complainant, more so when the said documents come into existence after the institution of the complaint and when the contents of the said documents had not been proved by the accused in the manner known of law.

7. The learned counsel for the appellant submits that the Court ought to have noticed if really the case of the accused that they had deposited with the complainant the blank cheque besides the other documents as security for the supply of materials on credit and that they were not returned even after there was no due as per the settled accounts is true, then even before the institution of the complaint the accused would have taken necessary action to get back those documents including the cheque and they would not have waited till the complainant initiated action, to take action for getting back those documents.

8. The learned counsel for the appellant submits that the Court below also failed to appreciate that no stop payment advice was given to the bank given by the accused to stop payment in the event of the cheque given as security for the transaction to the complainant is filled up with the authority of the accused and presented for collection by the complainant to the bank.

9. The learned counsel for the appellant submits that the Court below also failed to appreciate that Ex.B2 viz, the Sale Agreement dated 5.6.1998 has no connection whatsoever with the business transaction that the accused had with the complainant and that it was not executed by the accused as security to the complainant for supply of materials to them on credit basis as has been projected by the accused.

10.The learned counsel for the appellant submits that the Court below failed to appreciate that the complainant had categorically denied the case of the accused that blank cheque were sent by courier post with a covering letter via, Ex B6 and the mere production of the receipt issued by the courier company viz, Ex.B7 as also Ex.B6 through DW2 would not prove the case of the defence that they had delivered the blank cheque as security to the complainant.

11.The learned counsel for the appellant submits that the learned Magistrate failed to appreciate that there is absolutely no satisfactory evidence in the shape of documents such as lorry receipt, delivery chalan, account statement, etc, to show that the accused had returned the goods worth about Rs.4,59,420/- which was found to be inferior according to the accused and Ex.B10 viz the covering letter under which the material is stated to have been given should have been created by the accused later to prop up their case that the inferior quality material had been returned since there is no seal or the signature of the partners of the complainant in the said Ex.B10.

12.The learned counsel for the appellant submits that the Court below made much of the non mention of the Exs.B1 and B2 in the complaint. It is for the accused to prove the stand taken by the Ex.B2. the Court failed to appreciate that the Ex.B1 itself was not given within the statutory time limit after the notice Ex.A8 issued by the complainant demanding payment was received by the accused and therefore no mention of Ex.B1 was made in the complaint.

13.The learned counsel for the appellant submits that the Court below failed to see that Rs.10,00,000/- was paid as advance in respect of the sale transaction and that Rs.3,50,000/- was paid as advance for the supply of goods on credit and that they are two different transactions and the Court was wrong in assuming that there was no necessity for the accused to pay Rs.3,50,000/- on 2.6.1998 when Rs.10,00,000/- had been paid to the accused by the complainant on 5.6.1998 failing to see that the accused was paid the said amount in respect of a sale transaction which is separate and distinct from the business transaction between the complainant and the accused and that Rs.3,50,000/- was paid by the accused as advance to the complainant for the purchase of yarn from them.

14.Though this Court ordered notice to the respondents, the same was returned un served with an endorsement "No such person in the address" and to that effect, certificate also enclosed.

15.I have given my careful consideration to the respective submission made by the learned counsel for the parties.

16.In this case, the learned trial judge failed to appreciate the facts that the impugned cheque bear the signature

of the appellant and the evidence placed categorically shows the presumption that Exhibit-A7 was issued in discharge of the legally recoverable debt. The appellant/complainant proved his part of statutory presumption under section 139 of the Negotiable Instruments Act.

17. Normally in the cheque cases there would be vital discrepancies in the evidence adduced by both parties showing the nature of transactions. But the appellant/complainant materially disclosed his case as stipulated in the negotiable instrument act in the light of the evidences placed by him.

18. The learned trial Court misconstrued the documents Exhibits-B17 and B18, when the said documents came to existence only after the institution of the complaint preferred by the appellant. The reply made by the respondent/accused through Exhibit-A8 setting out a false case, which is not supported by the material documents and the question of security does not arise since the respondent/accused failed to shift the burden of proof against the appellant. The learned trial Court failed to appreciate the fact that Exhibit-B1 itself was not given within the statutory time limit after the notice Exhibit-A8 issued by the appellant demanding payment. Therefore, the trial Court ought to have considered the issue which destroys the case of the respondent/accused.

19. On careful analysis of the evidence it is seen that Rs.10 Lakhs was paid as advance in respect of the sale transaction and Rs.3.50 Lakhs was paid as advance of supply of goods on credit and the trial Court misconstrued by assuming that there was no necessity for the respondent/accused to pay Rs.3.50 Lakhs on 2.6.1998 when Rs.10 Lakhs had been paid by the appellant to the respondent on 5.6.1998. The trial Court misread the documents which are separate and distinct and Exhibit-B2 and other documents were executed only as security.

20. In the result:

(a) this Criminal Appeal is allowed and the order passed by the learned Judicial Magistrate No.III, Salem in C.C.No.14 of 1999 dated 20.9.2002 is set aside;

(b) the respondent/accused is convicted by imposing 3 months simple imprisonment and fine of Rs.5,000/-;

(c) the respondent/accused shall pay a sum of Rs.4,28,920/- to the appellant/complainant within a period of eight weeks from the date of receipt of a copy of this order, failing which the

respondent/accused shall undergo 3 months simple imprisonment;

(d) the learned Judicial Magistrate No.III, Salem, is directed to secure the respondent/accused and to proceed the case.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

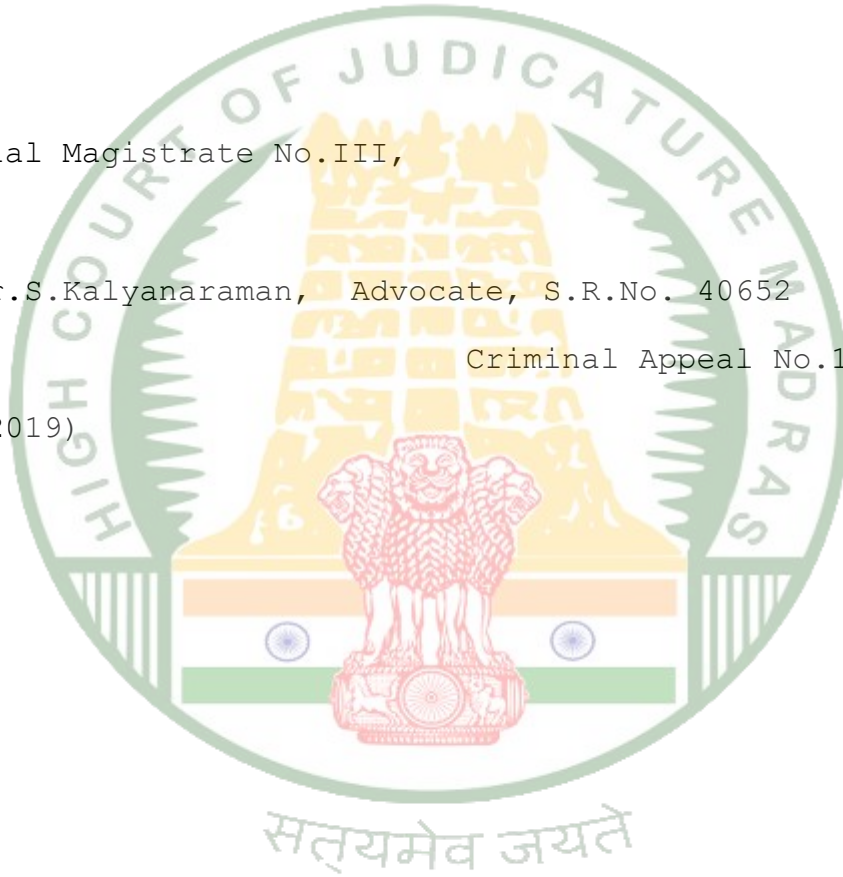
To

The Judicial Magistrate No.III,
Salem.

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No. 40652

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RSV(CO)
GN(01/04/2019)



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