

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal Nos.737 & 739 of 2003

M/s.Maris Spinners Limited,
Rep. by its Authorised Representative
Mr.S.Subramaniam
No.9, Cathedral Road,
Chennai - 600 006.

... Appellant in both the Crl.A.s

Vs

1.M/s.ESS.EMM Textiles
Rep. by its Partners
Sivamani

2.Sivamani

... Respondents in Crl.A.737/03

AND

1.M/s.S.G.R.Textiles,
Rep. by its Partners,
S.Shanmugam

2.S.Shanmugam

3.Sivamani

... Respondents in Crl.A.739/03

Common Prayer: Criminal Appeals filed under Section 378(1) of the Criminal Procedure Code, against the order of acquittal passed on the respondents by the learned III Additional Sessions Judge, Chennai in C.A.Nos.278 and 279 of 2002 dated on 17.04.2003.

For Appellant : Mr.Abdul Saleem
for M/s.Anand Abdul & Vinodh Associates

For Respondents: No Appearance

COMMON JUDGMENT

These criminal appeals were preferred by the appellant / complainant against the order of acquittal passed by the learned III Additional Sessions Judge, Chennai, made in C.A.Nos.278 and 279 of 2002 dated 17.04.2003.

2.Brief case of the appellant is that:

The facts of the case is that the appellant/complainant and respondent/accused herein entered into business transaction towards purchase of cotton and yarn products for Rs.14,43,000/- and out of the aforesaid total sum of Rs.10,50,000/- remained due and payable by the respondent and he issued two cheques bearing Nos.131281, 131282 dated 30.08.1999 and 06.09.1999 respectively drawn in Bank of Maharashtra, Tirupur. The appellant deposited the cheques for collection in his bank Karur Vysya Bank Limited, Chennai, which was returned on 14.03.2000 with an endorsement Payment stopped by drawer and insufficient funds. Thereupon the appellant issued a statutory legal notice on 20.03.2000 to the respondent and the same was not received by the respondent deliberately and neglected to make payment. Hence appellant filed a complaint under section 138 of Negotiable Instruments Act.

3.During the trial, the appellant examined himself as PW1 and Exhibits-P1 to P12 were marked. The respondent examined himself as DW1 and Exhibit-D1 was marked.

4.On completion of trial, the learned trial Court convicted the respondent/accused by holding that the appellant/complainant proved the offence under section 138 of Negotiable Instruments Act. On appeal, the learned lower appellate Court set aside the order passed by the trial Court and acquitted the respondent/accused. Aggrieved over the order of acquittal, the appellant filed this criminal appeal.

5.The learned counsel for the appellant submits that the learned 1st Appellate Judge ought to have taken note that the accused in the Quash Petition filed before the Hon'ble High Court stated that the subject cheques were issued to the appellant and even the letter addressed to the accused bankers had only requested them not to honour the cheques stating that the cheques had been misplaced and the letter did not state that the cheques were taken forcibly by the complainant.

6.The learned counsel for the appellant submits that the learned 1st Appellate Judge failed to take note that the reason for dishonor of cheques was payment stopped by drawer and insufficient funds and hence the evidence of RW1 that the signature of accused found in the cheques did not tally with the specimen signature cannot be taken note and cannot be believed.

7.The learned counsel for the appellant submits that the learned 1st Appellate Judge ought to have taken note that the 3rd accused had not filed any document to show that partnership firm of which he is a partner along with the 2nd accused had been dissolved nor had he filed any document to show that he had been retired from the partnership firm, hence he continues to be partner of the 1st accused partnership firm and is equally liable.

8.I heard Mr.Abdul Saleem for M/s.Anand, Abdul and Vinodh Associates, learned counsel for the appellant and there is no representation for the respondents in spite of notice served by this Court and these appeals were pending from the year 2003.

9.In the case on hand, the learned lower appellate Court reversed the order of conviction passed by the learned trial Court. Therefore this Court carefully re-appreciated the evidences adduced in both cases.

10.It is an admitted fact that the impugned cheques were in the custody of the appellant and the respondent/accused have not denied his signatures contained in the cheque leaves. Normally without any transaction, nobody will issue the cheque to the 3rd party but there are extraneous considerations where the facts of the case would be on different footing to lodge the complaint. But in this case, admittedly, both parties having their business transactions including partnership agreement. The case of the respondent/accused is that the impugned cheques were forcibly taken by the appellant/complainant in the presence of the police, was not supported by material particulars except oral evidence. The learned trial Court, relying on this disbelieved the case of the respondent/accused and convicted him for the offence under section 138 of the Negotiable Instruments Act. Now the question is, whether the lower appellate Court is right in reversing the facts appreciated by the trial Court.

11. On careful analysis of the evidence, the respondent/accused failed to prove his defence and in fact the same was not mentioned in the quash petition filed before this Hon'ble Court against C.C.No.2131 of 2000. Further the evidence of the appellant would show that there is no document filed by the accused to prove the partnership firm which have been dissolved. Therefore all the accused were acted as the partners and equally liable for the dishonor of the impugned cheques. It is also to be noted that the respondent/accused issued reply notice alleging that the impugned cheques were forcibly taken by the appellant only after receiving the statutory notice. Therefore the defense raised by the respondent/accused cannot be believed and the lower appellate Court misread the evidences and reverses the well founded judgment of the learned trial Court.

12. In the result:

(a) Both the criminal appeals are allowed and the order of acquittal passed by the learned III Additional Sessions Judge, Chennai, made in C.A.Nos.278 and 279 of 2002 dated 17.04.2003 are set aside. (b) The conviction and sentence imposed by the trial Court in C.C.Nos.1201 and 5027 of 2000 are confirmed.

(c) The learned trial Court is directed to take necessary steps in securing the respondents to undergo the sentence imposed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The III Additional Sessions Judge,
Chennai.

2. -Do-Thro Principal Sessions Judge,
Chennai.

Copy to
The Section Officer,
Criminal Section, High Court, Madras.

Criminal Appeal Nos.737 & 739 of 2003

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