IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.01.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.595 of 1998

Instech International,
Represented by its Proprietor,
T.S.Santhanakrishnan,
No.22, Venkararangam Street,
Triplicane,
Chennai 600 005. ... Appellant

Vs.

A.Silambuselvlan,
Chairman,
National Industrial Training Institute,
Kattamannar Koil 608 301. ... Respondent

Prayer:
Appeal filed under Section 378 (4) of the Cr.P.C. Seeking to setaside the order of the XIII Metropolitan Magistrate, Egmore, Chennai dated 02.06.1998 and passed in C.C.No.6222 of 1994, acquitting the respondent/accused of the offence under section 138 of the Negotiable Instruments Act (1881) (as amended) and convict the respondent.

For Appellant : Mr.P.N.Radha Krishnan

For Respondent :Mr.K.Srinivasan, Amicus Curiae

J U D G M E N T

The appellant has filed this appeal seeking to setaside the order dated 02.06.1998 in C.C.No.6222 of 1994 passed by the learned XIII Metropolitan Magistrate, Egmore, Chennai, acquitting the respondent/accused for the offence under section 138 of the Negotiable Instruments Act (1881) (as amended) and convict the respondent.

2. The appellant is the complainant and the respondent is the accused in the case in C.C.No.6222 of 1994..

3. The complainant filed the complaint against the accused u/s.138 of the Negotiable Instrument Act. The complainant is the owner of electrical trade, tools and

equipments. The accused purchased electrical articles from the complainant for which the accused executed a demand promissory note on 02.05.1994 for proper and valid consideration and agreed to repay a sum of Rs.1,17,528/-on demand together with interest of 18% per annum. In order to discharge the liability, the accused issued a cheque of Canara Bank, Turaimangalam, Trichy District bearing cheque No.709697 on 25.06.1994 for a sum of Rs.1,17,500/- in favour of the complainant. The said cheque was issued by the accused to satisfy the pre-existing debt for purchasing the electrical items from the complainant. The said instrument was marked as Ex.P1. When the Complainant presented the said cheque for collection through his Banker, State Bank of India, Triplicane Branch, the instrument was returned as unpaid by the bankers of the accused on 22.07.1994 with an endorsement 'Funds insufficient'. That Banker's memo was marked as Ex.P2. Thereafter, the complainant issued a statutory legal notice through his counsel to the accused on 03.08.1994 demanding the payment of Rs.1,17,500/- with interest. The said legal notice was received by the accused on 06.08.1994. However, the accused neither replied to the legal notice nor repaid the amount. Therefore, the complainant filed a complaint u/s.138 of the Negotiable Instrument Act. Thereafter, the accused was served with copies of the documents relied by the prosecution and when questioned by explaining the crux of the allegations set out against him, he denied the allegations and he pleaded not guilty. Thereafter, charges were framed against the accused.

4. Heard the learned counsel appearing for the appellant and Amicus curiae, appointed by the Court for the respondent.

5. Learned counsel for the appellant/complainant would submit that there was business transaction in between the appellant/complainant and the accused/respondent. For the purpose of repaying the amount initially he executed a promissory note on 02.05.1994. Thereafter, the accused issued an instrument for discharge of his liability on 25.06.1994. The learned counsel would further submit that the appellant/complainant clearly established the case before the trial court that there was a legally enforceable debt on 02.05.1994 in order to discharge the liability, the said instrument was issued. However, the instrument was dishonoured with an intention to cheat the appellant/complainant. The appellant/complainant established the case before the trial court and as per section 138 of the Negotiable Instrument Act, the presumption is always in favour of the holder of the cheque, accordingly, they proved the case. However, the learned trial Judge without considering the material

evidence acquitted the accused which is untenable. Hence, he prayed for allowing the appeal.

6. Per contra, the learned Amicus Curiae for the respondent would submit that though the petitioner averred in his complaint that there was a business transaction in between the appellant and the respondent, however, no invoice or bills were marked before the trial court in order to prove that there was a business transaction in between the appellant and the respondent. Further, there was no legally enforceable debt under the presumption u/s.138 Negotiable Instrument Act and the presumption is a rebuttable one, since the appellant failed to establish the case before the trial court that there was a legally enforceable debt for which the said instrument was issued. After considering the materials, the trial court acquitted the accused which is preferably valid. This Court need not interfere with the order of the acquittal mechanically unless the order of acquittal is perverse and accordingly he prayed for dismissal of the appeal.

7. In the light of the above submission, now it has been analysed whether there was a pre existing debt in favour of the appellant.

8. On perusal of the entire records it reveals that the complainant averred in his complaint that he is the owner of the electrical shop. The accused person purchased electrical goods from him, for which, the accused executed a promissory note on 02.09.1994. In order to discharge the liability, the accused issued Ex.P1 instrument in favour of the appellant on 25.06.1994. However, on perusal of the cross examination of P.W.1, the complainant clearly admits that the promissory note and the instrument was executed on the same date i.e., on 02.05.1994. When that being the position, the instrument and the promissory note was issued on the same date, this Court can easily presume that there was no pre-existing debt in favour of the appellant for which the said instrument was issued.

9. However, in M.P.No.4237 of 1998, the complainant in his written statement he clearly stated that Rs.32,000/- was already paid by the accused. When the accused already paid Rs.32,000/- this Court does not know how they calculated Rs.1,17,500/- as debt due to the appellant. Further the appellant did not file any document to show that the respondent/accused purchased electrical items from the appellant. The evidence of Bank officials also indicated that the signature and the other columns were filled by different persons. In view of the above, the appellant did not establish the case before the trial

court that there was a legally enforceable debt for which the instrument was issued for discharging the liability. In the absence of any prosecution evidences, I do not find any error in the order of acquittal passed by the trial court.

10.The criminal appeal is accordingly dismissed. The judgment dated 02.06.1998 made in C.C.No.6222 of 1994,by the learned XIII Metropolitan Magistrate, Egmore, Chennai, is hereby confirmed. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Ah/mfa

To

The XIII Metropolitan Magistrate, Egmore, Chennai.

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A.SK(27/02/2019)