

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.242 of 2014

M/s.M.M.T.C.Limited,
Rep. By Deputy General Manager,
R.Ramachandran,
Chennai House,
No.7, Esplanade,
Chennai-600 103.

...Appellant

Versus

1. G.Neetha Ragav
2. K.Raghav Ram

...Respondents

Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the judgment passed on 04.02.2014 in C.A.No.213 of 2012 on the file of the learned XV Additional Sessions Judge, Fast Track Court-I, Chennai, reversing the judgment of conviction and sentence passed in C.C.No.1095 of 2006, dated 12.10.2012, by the learned VII Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.K.V.Sridharan

For respondents : Notice served-No appearance

J U D G M E N T

This Criminal Appeal has been preferred against the judgment passed on 04.02.2014 in C.A.No.213 of 2012 on the file of the learned XV Additional Sessions Judge, Fast Track Court-I, Chennai by setting aside the judgment of conviction and sentence passed in C.C.No.1095 of 2006, dated 12.10.2012 passed by the learned VII Metropolitan Magistrate, George Town, Chennai.

2. The appellant is the complainant and the respondents are the accused persons. The appellant has filed a private complaint against the respondents 1 and 2 under Section 200 Cr.P.C. before the learned VII Metropolitan Magistrate, George Town, Chennai for the offence under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'NI Act') and the same was taken on file in C.C.No.1095 of 2006 and notice has been sent to the respondents and the

respondents appeared before the learned VII Metropolitan Magistrate through the counsel. Before the trial Court, in order to prove the case, the complainant has examined one witness viz., Mr.Rampal as P.W.1 and marked six documents viz., Exs.P1 to P6.

3. When the incriminating materials were put before the respondents/accused under section 313 Cr.P.C, they denied the same as false and did not examine any witness and marked any document. After full-fledged trial, the learned Magistrate found the respondents guilty for the offence under Section 138 of NI Act and convicted and sentenced them to undergo six months simple imprisonment and to pay a sum of Rs.6,00,000/-to the complainant as compensation.

4. Aggrieved against the judgment passed by the learned VII Metropolitan Magistrate, Chennai, dated 12.10.2012, the respondents had preferred an appeal before the Principal Sessions Judge, in C.A.No.213 of 2012 and the same was made over to the learned XV Additional Sessions Judge, Chennai. The learned Principal Sessions Judge, after hearing the arguments on either side, allowed the appeal by setting aside the conviction and sentence passed by the trial Court. Challenging the judgment of the learned XV Additional Sessions Judge, Chennai in C.A.No.213 of 2012, dated 04.02.2014, the complainant has preferred the present appeal before this Court.

5. The learned counsel for the appellant would submit that he is the authorized person to file the complaint and the learned Magistrate has accepted the case of the appellant and convicted the respondents for the offence under Section 138 NI Act, whereas the learned Additional Sessions Judge has not appreciated the evidence and erroneously set aside the judgment of the learned Magistrate on the ground that the appellant has not filed any authorization to file a complaint and his authority to file the complaint, which is against law. In support of his contention, the learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court of India in the cases of (i) M/s.Haryana State Co.op Supply and Marketing Federation Ltd., Vs. Jayam Textiles and another reported in (2014-2-L.W.(Crl.)445) and (ii) Samrat Shipping Co. Pvt Ltd., Vs. Dolly George reported in (2003 SCC (Cri) 1224) and even assuming that the appellant has not proved that the complainant has no authority to file the complaint, still the Court should have remanded back the case to the trial Court with a direction to the complainant to prove his claim and his authority to file the complaint.

6. Though notice served on the respondents and the same was returned. Therefore, this Court ordered substituted service and it was effected. Still there was no appearance on

behalf of the respondent. Therefore, Registry was directed to print the name of the respondent in the cause list, and listed the appeal for final disposal. Even today, there is no representation for the respondents. However, this Court is inclined to dispose of the appeal after hearing the arguments of the learned counsel for the appellant and perusal of the entire materials placed before this Court as well as the judgment of both the Courts below.

7. It is the case of appellant that the first accused approached the appellant for import of Palm Oil on high seas basis and sought financial assistance from them for the said import. The complainant agreed to extend financial assistance for the said import as per the terms and conditions contained in the agreement for high seas sale deed dated 23.06.2004 and hypothecation agreement dated 17.12.2004 entered into between the first respondent and the appellant. Pursuant to the said agreement, one parcel of 500.416 Mts of Crude Palm Kernel Oil was imported in the month of December 2004. The respondents could lift only 100 Mts of Palm Oil till 19.05.2005 but could liquidate any cargo thereafter. As per the hypothecation agreement dated 17.12.2004, the respondents were liable to liquidate the entire cargo before 16.12.2005 and to pay the dues to the appellant, toward the discharge of the debt, the second respondent issued cheque bearing No.872290 dated 16.11.2005 for a sum of Rs.6,00,000/- drawn on Indian Overseas Bank, Ekkattuthangal Branch, Chennai. The appellant presented the cheque before his banker for encashment and it was returned with an endorsement as insufficient funds. Thereafter, the appellant issued statutory notice to the accused on 01.12.2005. The said notice was returned with an endorsement as 'unclaimed'. Therefore, after statutory period, the appellant company filed a private complaint before the learned Metropolitan Magistrate under Section 200 Cr.P.C. against the respondents for the offence under Section 138 of NI Act. The learned Magistrate has taken the complaint on file and found that the respondents are liable to pay the amount and since they have not repaid the due amount. Thereby, committed the offence under Section 138 of NI Act.

8. Heard the learned counsel for the appellant/complainant and perused the materials placed before this court. Notice has been served on the respondents But, there is no representation on behalf of the respondents.

9. On reading of the entire records, it is seen that Ex.P1 and Ex.P2 are the agreements which have been signed by the first respondent in the capacity of proprietrix. On careful scrutinizing of both the agreements, it is seen that the second respondent neither signed as a guarantor nor as a witness or attester to the agreement. Nowhere, the second respondent is shown as he is responsible for the claim amount.

The cheque was signed only by first respondent. Admittedly, the appellant has not proved that in what way the second respondent is liable to repay the amount mentioned in the Ex.P1 and Ex.P2 agreements. Though the first respondent is a proprietrix, she availed the loan by executing the documents Ex.P1, Ex.P2. Admittedly, the second respondent has not issued any cheque. Based on the agreement Exs.P1 and P2, the second respondent is not liable to be punished under Section 138 of NI Act. Therefore, the judgment of the learned Magistrate is perverse and the lower appellate Court has rightly appreciated the evidence and acquitted the respondents. As far as the first appellant is concerned, though the first respondent issued a cheque, admittedly, there is no liability has been proved by the appellant that the cheque was issued by the first respondent only to discharge the legally enforceable debt, mere issuance of cheque is not an offence under Section 138 of NI Act.

10. It is for the appellant to prove that the cheque was issued to discharge the legally enforceable debt. Once the complainant has proved the initial burden, then only the statutory presumption, directing the accused to rebut the presumption would arise. Whereas in this case, the appellant has not proved that the second respondent issued the cheque to discharge a legally enforceable debt. Therefore, the initial burden has not been proved by the appellant against the second respondent.

11. It is well settled proposition of law that the accused need not rebut the presumption by direct evidence. The respondents can rebut the presumption by preponderance of possibilities or probable defence. Admittedly, in this case, the appellant/complainant has not proved that the second respondent has issued a cheque for legally enforceable debt. Therefore, in the absence of any such proof, the second respondent is not liable to pay the amount to the appellant. Therefore, the trial Court has not properly appreciated the complaint given by the appellant and also the evidence of the appellant and convicted the respondents. The first appellate Court is the final Court of facts finding and it has independently re-appreciated the entire evidence and allowed the appeal by setting aside the judgment passed by the learned Magistrate. While interfering with the judgment of acquittal, this Court has to be satisfied with some compelling circumstances to interfere with the judgment of the lower appellate Court. Considering the facts and circumstances of the case, this Court does not find any compelling circumstances to interfere with the judgment of the lower appellate Court and set aside the judgment of the lower Appellate Court and finds there is no merit in the appeal. Hence, the appeal is liable to be dismissed.

12. In the result, this Criminal Appeal is dismissed.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

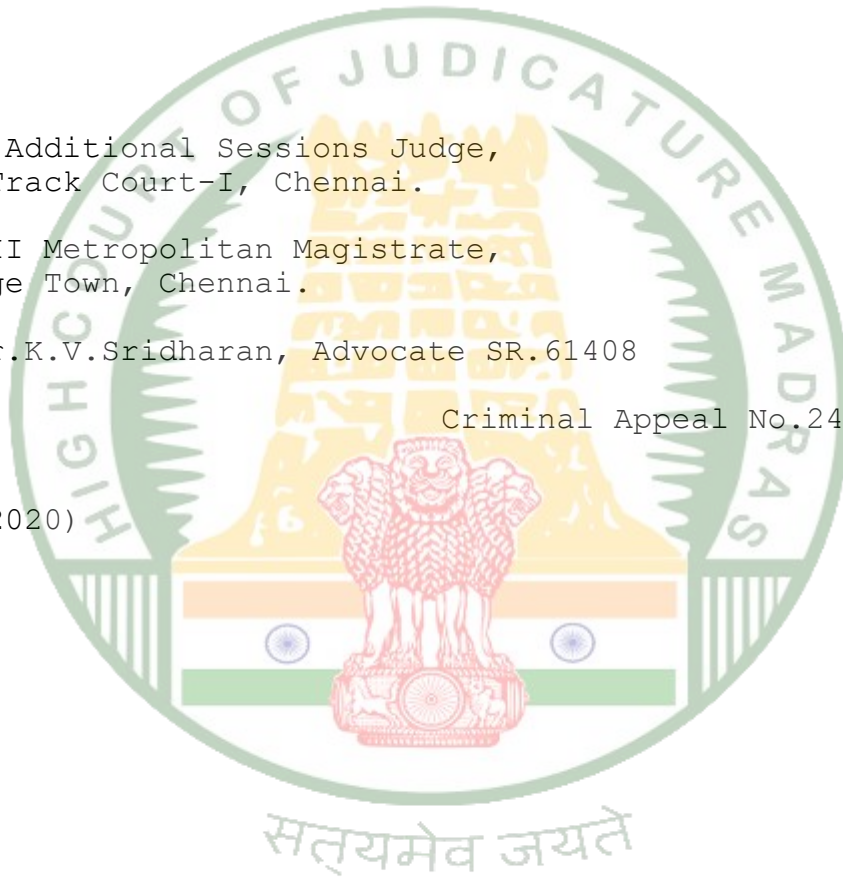
1. The XV Additional Sessions Judge,
Fast Track Court-I, Chennai.

2. The VII Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr.K.V.Sridharan, Advocate SR.61408

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PM(CO)
CB(02/03/2020)



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