IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2018

DELIVERED ON : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal Nos.409 of 2008 and 15 of 2009

M/s.Sun Electronics,
represented by its Proprietrix
S.Santosh, rep by its Power Agent Mr.Suraj Kankaria
G-15, Electronic Complex,
No.19, Narsingpuram Street,
Mount Road,
Chennai - 600002. ... Appellant in both appeals

Vs.

Sadasivam
Prop. of M/s.Township Cable Network,
No.12B, Kangeyanellore Road,
Gandhi Nagar,
Vellore - 600006. ... Respondent in both appeals

Crl.A.No.409 of 2008 filed u/s.378 of the Code of Criminal Procedure against the judgment of learned VII Metropolitan Magistrate, George Town, Chennai, passed in C.C.No.5347 of 2006 on 05.03.2008.

Crl.A.No.15 of 2009 filed u/s.378 of the Code of Criminal Procedure against the judgment of learned III Additional Judge, City Civil Court, Chennai, passed in C.A.No.139 of 2008 on 24.10.2008.

For Appellant [in both appeals] : Mr.Vikram U.Jain for M/s.Vikram Jain Associates

For Respondent [in both appeals] : Mr.S.Umapathy

COMMON JUDGMENT

Crl.A.No.409 of 2008 arises against the judgment of learned VII Metropolitan Magistrate, George Town, Chennai, passed in C.C.No.5347 of 2006 on 05.03.2008. Crl.A.No.15 of 2009 arises against the judgment of learned III Additional Sessions Judge, City Civil Court, Chennai, passed in C.A.No.139 of 2008 on 24.10.2008.

2. Appellant/complainant and respondent/accused had business transaction and respondent/accused purchased goods worth Rs.2,76,720.30 under 24 invoices on credit basis and towards part payment of the liability accused issued the following cheques : (1) Cheque No.363553 dated 30.06.2005 - Rs.17,375/- drawn on Tamil Nadu Mercantile Bank, Vellore; (ii) Cheque No.2289747 dated 08.02.2006 - Rs.91,194/- drawn on Dena Bank, Vellore; (iii) Cheque No.114342 dated 08.02.2006 - Rs.1,00,000/- and (iv) Cheque No.114344 dated 08.02.2006 - Rs.50,000/- drawn on Centurion Bank, Gandhi Nagar, which upon presentation were returned unpaid for the reason "insufficient funds and Account closed". Appellant/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, complaints in C.C.Nos.5347 and 5348 of 2006 on the file of learned VII Metropolitan Magistrate, George Town, Chennai, had been filed.

3. Before trial Court,

(i)C.C.No.5347 of 2006 - 1 witness was examined and 10 exhibits were marked. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 05.03.2008, acquitted the respondent. There against, appellant/complainant preferred Crl.A.No.409 2008.

(ii)C.C.No.5348 of 2006 - 1 witness was examined and 8 exhibits were marked. On the side of defence, none were examined and 2 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 05.03.2008, convicted respondent/accused for offence u/s.138 r/w 142 of the Negotiable Instruments Act and sentenced him to 6 months S.I. and directed him to pay the cheque amounts as compensation to appellant/complainant. Against such finding, respondent preferred C.A.No.139 of 2008 on the file of learned III Additional Sessions Judge, City Civil Court, Chennai, which came to be allowed under judgment dated 24.10.2009 and respondent was acquitted of all charges. There against, appellant/complainant filed C.A.No.15 of 2009.

4. Heard learned counsel for appellant and learned counsel for respondent. Perused the materials on record.

5. Learned counsel for appellant submitted that the respondent himself has admitted in the reply notice that there were business transactions (supply of electronic goods) between both parties and that he had issued several cheques to appellant/complainant in connection therewith. It was the usual practice that the cheques would be presented for payment only

upon installation of the goods. The trial Court rightly has negated the contentions of respondent that the cheques have been issued only towards security and not towards payment of liability, that the cheques have been filled up by some other person other than the drawer and that no evidence has been adduced to establish that appellant/complainant had sent goods and arrived at a finding that the cheques indeed were issued towards payment of liability and accordingly, convicted respondent as also directed him to pay the cheque amounts (in C.C.No.5348 of 2006) as compensation to the appellant/complainant. However, the appellate Court, on non-appreciation of facts and evidence on record, acquitted the respondent. In support of his contention, learned counsel relied on the following judgments:

(i) I.C.D.S. Ltd. v. Beena Shabeer & another [2002 (6) SCC 426]
(ii) General Auto Sales v. Vijayalakshmi [2005 Crl.L.J.1454]
(iii) Umaswamy v. K.N.Ramanath [2006 Crl.L.J. 3760]
(iv) A.V.Murthy v. B.S.Nagabasavanna [2002 (1) Crimes 306 SC]
(v) Ravi Chopra v. State and another [2008 (102) DRJ 147]
(vi) S.Gopal v. D.Balachandran [2008 (1) CTC 491]
(vii) P.S.A. Thamotharan v. Dalmia Cements (B) Ltd. [2004 (5) CTC 84]

6. This Court has considered the rival submissions.

7. There were business transactions between the appellant and the respondent and the appellant used to supply goods to respondent/complainant from 2003 onwards. The cheques in question were of the years 2005 and 2006. It is admitted by appellant that the amount which were due by way of invoices were to be paid within a period of 20 to 30 days and in this case, the cheques were of much later period and no explanation has been offered. PW-1 has admitted that he was not aware and conversant with the business transaction between appellant and respondent and admitted that the drawee name and amount has been filed up later. The specific case of the respondent was that the cheques were given in the course of transaction towards security and it had been misused by not taking into account the payments made by the respondent. Further, it was stated that appellant has not produced the Statement of Accounts to establish its case. It was admitted that the appellant used to supply goods to Pooja Electricals, Vellore and through them, supplies were made to the respondent. It was also admitted by appellant that there were dispute between Pooja Electricals and respondent. A case was registered by Pooja Electricals and negotiations were held at the police station at Vellore. It was further admitted that writings in the cheques differ from the signatures found thereon. Hence, the initial presumption has been dislodged by the respondent. On the other hand, no evidence has been let in by the appellant to prove these facts. Appellant was not sure

about the transaction particulars and were also not certain about when the cheques were received for supplies of the year 2003. The trial Court as well as the lower appellate Court, on proper appreciation of evidence and materials, had rendered a finding of acquittal which cannot be now disturbed and interfered unless gross illegality or perversity has been found.

Accordingly, the Criminal Appeals are dismissed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

gm

To

1. VII Metropolitan Magistrate, George Town, Chennai.

2. The III Additional Judge, City Civil Court, Chennai.

+2ccs to Mr.Vikram U Jain, Advocate SR.No.24488,24489

Criminal Appeal Nos.409 of 2008 and 15 of 2009

SSI(CO)
GMY(23/04/2019)