

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.A.No.475 of 2008

S.A.N.Subramanian

... Appellant/Complainant

Vs.

A.S.Balasubramanian

.... Respondent/Accused

Prayer:

Prayer:Criminal Appeal filed under Section 378 of Cr.P.C. seeking to set aside the order of acquittal dated 17.10.2007 made in C.C.No.186 of 2001 on the file of the Court of Judicial Magistrate, Tiruttani and convict the Respondent/Accused u/s.138 of the Negotiable Instruments Act and award adequate sentence and allow this Criminal Appeal.

For Appellant : M/s.M.Rajamani
for M/s.N.S.Sivakumar

For Respondent : Mr.S.Ilamparithi

J U D G M E N T

The appellant has filed this appeal seeking to set aside the order of acquittal dated 17.10.2007 made in C.C.No.186 of 2001 on the file of the Court of the learned Judicial Magistrate, Tiruttani.

2.The appellant is the complainant and the respondent is the accused in C.C.No.186 of 2001. The case of the appellant is that on 30.12.2000, the respondent issued a cheque for a sum of Rs.6,30,000/- in favour of the appellant. The said cheque was returned on 14.06.2001, as unpaid with an endorsement 'Funds Insufficient'. Thereafter, the appellant sent a legal notice to the respondent on 25.06.2001, by registered post with acknowledgement due and the same was received by the respondent on 03.07.2001. Since the respondent neither gave reply for the legal notice nor repaid the amount, the appellant filed the case in C.C.No.186 of 2001 before the learned Judicial Magistrate at Tiruttani.

3. On the side of the appellant/ complainant, three witnesses were examined and 5 documents were marked as exhibits. On the side of the respondent/ accused one witness was examined and ten documents were marked as exhibits.

4. After trial, the Trial Court acquitted the respondent/ accused as if there is no legally enforceable debt. Aggrieved by the said acquittal of the accused, the appellant/ complainant has filed this appeal before this Court.

5. The learned counsel for the appellant would submit that admittedly instrument Ex.P1 cheque was issued in favour of the appellant in order to discharge the legally enforceable debt. The said promissory note was marked as Ex.P5. The instrument as well as the promissory note were executed by the accused on the same day i.e., 30.12.2000. Further the said instrument was presented within six months i.e., on 05.06.2001 and the said instrument was returned on 14.06.2001. Hence, the appellant established the case before the Trial Court that there was a legally enforceable debt and to discharge the same, the instrument was issued to the appellant. As per Section 139 of the Negotiable Instruments Act, presumption is always in favour of the holder of the cheque. In order to disprove the complainant's case, the accused did not examine any other witness except him. Accordingly, she prayed for conviction of the accused.

6. Per contra, the learned counsel appearing for the respondent/ accused would submit that though the complaint is silent with regard to the business transaction in between the complainant and the accused, however, the fact remains that the accused is the manufacturer of apparels and he used to export the same through the complainant. The complainant is an agent who procured the apparels from the accused and the said apparel was transferred to exporters for the purpose of business transactions. He would further submit that Ex.P1 cheque and Ex.P5 promissory note were executed for security purpose, for the convenience of the business transaction. The said cheque and promissory note were executed on the same day i.e., on 30.12.2000. He would further submit that itself shows there was no legally enforceable debt and it is only for security purpose. Therefore, the judgment of the Trial Court need not interfered with.

7. Heard the arguments advanced on either side and perused the materials available on record.

8. In the light of the above submissions, now it has to be analysed whether the complainant has proved the case that there was a legally enforceable debt, for which, the accused issued

the cheque for discharging the liability of legally enforceable debt.

9. Admittedly, Ex.P1 instrument was issued on 30.12.2000 and the said instrument was presented on 05.06.2001 and the said instrument was returned on 14.06.2001. Besides, Ex.P5 promissory note was also executed on the same day on 30.12.2000. On perusal of the complaint, the complaint did not disclose anything with regard to the business transaction in between the complainant and the accused. However, on perusal of DW1 evidence and on perusal of Ex.D1 to Ex.D8, particularly Ex.D7 and Ex.D8, it is clearly revealed that there was a business transaction in between the appellant as well as the respondent and the said instrument was issued for the purpose of business transaction. The exhibits further reveal that the accused is the manufacturer of the apparels and the complainant is the agent who procured the apparels from the accused for selling the same to the exporters. Further there is no proper evidence available to show that the said instrument was issued for discharging legally enforceable debt.

10. It is curious to note that Ex.P1 cheque and Ex.P5 promissory note were executed on the same day. If both were executed on the same day, how this Court can presume that the instrument was issued for discharging legally enforceable debt. Hence, in view of the above, the complainant did not establish the guilt on the accused or proved the case the instrument was issued for discharging liability. However, the accused proved his case that there was no legally enforceable debt by way of marking Ex.D8 and Ex.D9.

11. In view of the above, I do not find any error in the order dated 17.10.2007 in C.C.No.186 of 2001 passed by the learned Judicial Magistrate, Tiruttani.

12. In the result, the criminal appeal is dismissed. The order dated 17.10.2007 made in C.C.No.186 of 2001 by the learned Judicial Magistrate, Tiruttani, is hereby confirmed.

Sd/-
Assistant Registrar (CS VIII)

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Sub Assistant Registrar

To

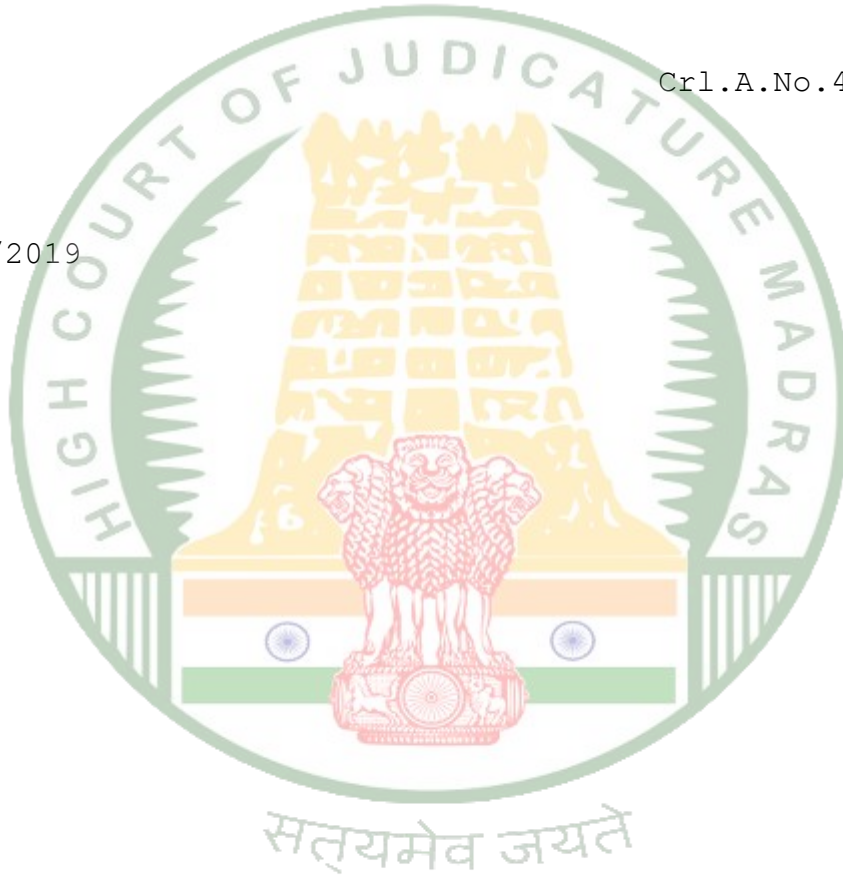
The Judicial Magistrate,
Tiruttani.

+1cc to Mr.S.Ilamparithi, Advocate Sr.1232

+1cc to Mr.N.S.Sivakumar, Advocate Sr.1825

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mr[co]
srg 04/02/2019



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