

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.805 of 2009

M/s.Vashini Business Machines,
Rep., by its Partner,
Shanmuga Sundaram,
S/o.Palaniswamy,
Aged 40 years,
24/2, Pykara Office Road,
Tatabad,
Coimbatore - 12.

... Appellant/Complainant

[Amended as per order in Crl.M.P.No.2910 of 2019 in Crl.A.No.805 of 2009 dated 22.02.2019.]

Vs.

1.M/s.Master Bulls,
No.4 Kongunagar,
Kalveerampalayam,
Maruthamalai Road,
Coimbatore-641 049
represented by its Partner/Signatory
Mr.P.Udayakumar.

2.Mr.P.Udaykumar,
S/o.Pitchandi,
Partner/Signatory M/s.Master Bulls,
L-126, TNHB Nethajipuram Post,
Singanallur,
Coimbatore-641 005.

3.N.Vishnuvaradhan,
S/o.N.Nithyanandan,
Partner, M/s.Master Bulls,
24, Mahaliamman Kovil Thottam,
Uppillipalayam Main Road,
Varatharajapuram,
Coimbatore-641 015.

4.F.S.Vijay Joseph,
Partner, M/s.Master Bulls,
7, Ram Gardens,
Udayampalayam,

Sowripalayam Main Road,
Coimbatore - 641 028.

... Respondents/Accused

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal and Judgment dated 10.11.2009 made in C.C.No.106 of 2008 on the file of the Judicial Magistrate No.II, Coimbatore.

For Appellant : Mr.T.Sirish Chowdhri

For R4 : Mr.V.Ramana Reddy

For R3 : Mr.P.Duraiswamy

For R2 : Mr.V.Sathish

JUDGMENT

This Criminal Appeal arises out of the Judgment passed by the learned Judicial Magistrate No.II, Coimbatore, in C.C.No.106 of 2008 dated 10.11.2009, wherein the respondents were acquitted under Section 138 and 142 of the Negotiable Instruments Act.

2.The gist of the case is that the 1st respondent is a partnership firm and the respondents 2 to 4 are its partners. The respondents approached the appellant's firm for purchasing of 21 computers and one server on credit basis to the tune of Rs.3,66,808/- vide credit invoice No.IN00449 dated 24.07.2007. In discharge of the said due to the appellant, the 2nd respondent with knowledge and acceptance of other respondents issued the cheque dated 10.09.2007 for a sum of Rs.3,66,808/- drawn on M/s.Oriental Bank of Commerce, R.S.Puram, Coimbatore. The appellant on the advice of the respondents presented the cheque with his bankers M/s.Union Bank of India, Gandhipuram, Coimbatore. On 13.10.2007 the said cheque was not honoured and returned with an endorsement "Funds Insufficient". Thereafter, a statutory notice was issued to the respondents on 26.10.2007 and the same was received by them on 31.10.2007. The 2nd respondent has sent a reply dated 16.11.2007 by stating frivolous grounds. Hence, the appellant filed a private complaint in C.C.No.106 of 2008 before the learned Judicial Magistrate No.II, Coimbatore. On completion of the trial in C.C.No.106 of 2008, the learned Judicial Magistrate No.II, Coimbatore acquitted the respondents. Against which the present appeal.

3.Before trial Court, the appellant examined himself as PW1 and marked 10 exhibits. On the side of the defence 3 witnesses were examined and marked 13 exhibits.

4.The contention of the learned counsel for the appellant is that PW1 was not able to specify the date on which the credit facility was extended. Further for availing the credit from the finance company, the respondents have handed over the said cheque and other documents to the appellant, which have been misused in this case. The appellant was unable to explain the transaction particulars in detail. Hence, the trial Court acquitted the respondents by giving them benefit of doubt.

5.The contention of the learned counsel for the 2nd respondent is that he had resigned from the 1st respondent's firm, hence he could not be held liable for the 1st respondent's transaction. The learned counsel for the 3rd respondent would submit that he has also resigned from the 1st respondent firm and in fact it was the 4th respondent, who was taking care of running the business independently and he is not a signatory to the said cheque and he has been roped in on the strength of Section 141 of the Negotiable Instruments Act. The learned counsel for the 4th respondent would submit that the business transaction was carried out by the firm and he acted only for the benefit of the firm and he is not personally liable for the transaction of the 1st respondent's firm.

6.While being so, the appellant and the respondents arrived at an understanding to settle the issues for a sum of Rs.4,00,000/- and to give quites to the above case. It was agreed between the appellant and the respondents to pay the amount of Rs.4,00,000/- in full quit to the entire transaction, in which the 4th respondent has paid a sum of Rs.2,00,000/- by way of demand draft bearing No.535600 dated 02.08.2019 drawn on ICICI Bank, Coimbatore Branch and the 2nd respondent has paid a sum of Rs.1,00,000/- drawn in cheque bearing No.905471 dated 02.08.2019 and the 3rd respondent has paid a sum of Rs.1,00,000/- by way of demand draft bearing No.032048 dated 20.08.2019 to the appellant. The parties were present and admitted the same.

7.In view of the above settlement, the parties have arrived at a compromise and joint memo of compromise under Section 147 of the Negotiable Instruments Act is placed, the offence is compounded. Accordingly, this Criminal Appeal stands disposed of.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Coimbatore.

2.The Inspector of Police
E-2 Peelamedu Police Station
Coimbatore

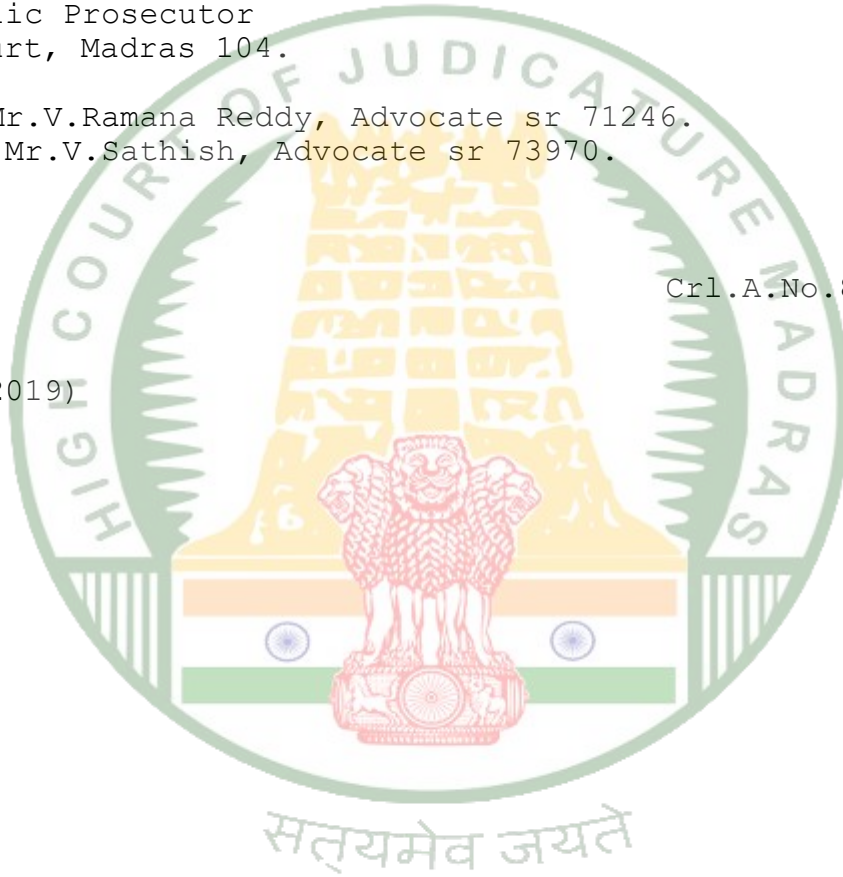
3.The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.V.Ramana Reddy, Advocate sr 71246.

+2 Ccs to Mr.V.Sathish, Advocate sr 73970.

Crl.A.No.805 of 2009

VBA(CO)
SP(23/09/2019)



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