IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

DELIVERED ON: 25.10.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.A.No.366 of 2012

M/s.Raj Television Network Pvt. Ltd.,
Represented by its
Admin Officer Mr.S.Suresh
No.32, Poes Road, 2nd Street
Teynampet, Chennai - 600 018 ... Appellant

Vs.

1.M/s.Ojas Media (P) Ltd.,
Rep. By its Managing Director
A.P.Murugadoss
No.6, Asthabujam Sannathi Street
Kanchipuram - 631 501

2.A.P.Murugadoss
Managing Director
M/s.Ojas Media (P) Ltd.,
No.6, Asthabujam Sannathi Street
Kanchipuram - 63 ... Respondents

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to set aside the judgment of the VI Additional Sessions Judge in C.A.No.146 of 2010 on 21.01.2011 and confirm the judgment of the learned XVIII Metropolitan Magistrate, Saidapet in C.C.No.10439 of 2003 dated 17.08.2010.

For Appellant : Ms.S.Sridevi

For Respondents : Mr.R.Balachandran

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment dated 21.01.2011 passed by the VI Additional Sessions Judge, Chennai in C.A.No.146 of 2010 confirming the order of conviction and sentence dated 17.08.2010 passed by the XVIII Metropolitan Magistrate, Saidapet in C.C.No.10439 of 2003.

2. For the sake of convenience, the parties will be referred to as complainant and accused.

3.It is the case of the complainant that they are engaged in the business of Satellite Television Broadcast and the accused was a cable operator; in the course of business, the accused issued a cheque dated 18.08.2003 for Rs.3,00,000/- (Ex.P2) which when presented by the complainant was dishonoured on the ground "insufficient funds" on 29.08.2013; the complainant issued a statutory demand notice dated 20.09.2003, which was not received by the accused and the cover returned. Thereafter, the complainant initiated a prosecution in C.C.No.10439 of 2003 in the XVIII Metropolitan Magistrate, Saidapet, Chennai under Section 138 of the Negotiable Instruments Act against the accused.

4. The complainant examined their Manager Kishore Kumar as PW1 and marked Exs.P1 to P6. The second accused examined himself as DW1 and marked Ex.D1. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 17.08.2010 in C.C.No.10439 of 2003, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo three months simple imprisonment and to pay a sum of Rs.6,00,000/- as compensation. The appeal in C.A.No.146 of 2010, that was filed by the accused, was allowed by the VI Additional Sessions Judge, Chennai on 21.01.2011 and the accused was acquitted. Challenging the acquittal of the accused, the complainant has preferred the present appeal.

5. Heard the learned counsel for the complainant and the accused.

6. The trial Court judgment is indeed very laconic and there is absolutely no discussion of the evidence adduced by the complainant and the accused, whereas the Appellate Court has discussed the evidence in extenso. In the complaint, the complainant has not even pleaded about the debt. It may be necessary to extract the relevant portion of the complaint, which reads as follows:

> "5. The complainant states that they are telecast their channel through the cable operators an the cable operators pay the amount to the complainant basis of the number of connections. The complainant states that during the course of the said business the Accused issued a Cheque the details given hereunder:

S.No.	Cheque No.	Date	Amount	Drawn on
1	491164	18.08.2003	3,00,000	Bharat Overseas Bank Ltd.,, Kanchipuram

6. The complainant presented the above said cheque for encashment to their Bankers, Namely CANARA BANK, Teynampet Branch on 26.08.2003, but the cheque was returned dishonoured by the bankers of the Accused on 29.08.2003 for the reason "Insufficient Funds".

7. Even in the evidence of the complainant, he has not stated a word about the debt. For maintaining a prosecution under Section 138 of the Negotiable Instruments Act, 1881, the impugned cheque should have been given in discharge of a legally enforceable debt. Therefore, it is incumbent on the part of the complainant to plead about the debt either in the complaint or in the sworn statement or in the examination-in-chief. A reading of the evidence of Kishore Kumar (PW1) shows that he has not whispered a word about the debt.

8. On the contrary, in the cross-examination, he has stated that he does not know whether the accused was appointed directly by the complainant as cable operator or through a distributor. PW1 has further stated that the records relating to the transaction have been destroyed. However, he was confronted with a notebook (Ex.P7), after seeing which he admitted that one Jayaprakash was appointed as distributor in Kanchipuram District, who in turn had appointed cable operators like the accused. He also admitted that the cable operators will have to make payment to the distributor, who in turn would make payment to the complainant. He also admitted that it was Jayaprakash, who received the impugned cheque, from the accused. Second accused got into the witness box and stated that there was no privity of contract between the accused and the complainant; the complainant was a broadcaster and he appointed Jayaprakash as a distributor, who in turn had appointed the petitioner as a cable operator; that Jayaprakash obtained a signed, but blank cheque from him and gave letter Ex.D1 dated 25.08.2003 assuring him that he will not present the cheque until the accounts are reconciled.

9. Ms.Sridevi placed reliance on the recent judgment of the Supreme Court in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019), wherein the Hon'ble Supreme Court has held that the complainant need not prove the debt since the cheque carries two presumptions with it, namely the one under Section 118 of the Negotiable Instruments Act and other under Section 139 of the Negotiable Instruments Act, which

together shifts the burden on the accused to prove that the cheque was not issued for a legally enforceable debt.

10. A complete reading of the said judgment shows that, in that case the complainant therein had clearly pleaded that a sum of Rs.7,86,300/- was due from the accused and after adjusting a sum of Rs.2,47,444/-, the balance amount of Rs.5,38,856/- was settled with the accused in September 2011 and towards that amount, the impugned cheque was issued. In that judgment, the Hon'ble Supreme Court has not stated that the complainant is absolved of its responsibility to plead the legally enforceable debt. What the Supreme Court has stated is that, the complainant need not prove the debt in view of the presumptions under Sections 118 and 139 of the Negotiable Instruments Act. There is an ocean of difference between pleading and proving. In this case, the complainant had appointed Jayaprakash as their distributor for Kancheepuram District, who in turn had appointed the accused as a cable operator to provide cable connections to the houses earmarked for him. This has been admitted by Kishore Kumar (PW1) in the cross-examination after he was confronted with Ex.P7. It is the case of the accused that distributor would obtain blank cheques from the cable operators as security lest they do not cheat them after availing the signals.

11. That apart, it is essential that the complainant should plead about the debt and only then the Court can decide whether the cheque was issued for a live debt or a time barred debt. In this case, the complainant has not only pleaded anything about debt, but the accused has adduced positive evidence to show that the cheque was not given to the complainant, but it was given to the distributor, who had wrongly handed over the same to the complainant, in breach of the undertaking given by him in Ex.D1.

12. It is trite that in an appeal against acquittal, if two views are possible, the view that favours the accused, merits acceptance.

13. Ergo, this appeal is devoid of merits and is accordingly dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The VI Additional Sessions Judge,
   Chennai.

2. The XVIII Metropolitan Magistrate,
   Saidapet.

3. The Public Prosecutor,
   High Court, Madras - 600 104.

+1cc to Ms.S.Sridevi, Advocate Sr.89802

Crl.A.No.366 of 2012

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srg 03/12/2019