

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.04.2019

Coram:

The Honourable Dr.Justice G.Jayachandran
Criminal Appeal No.626 of 2014

M/s.Thomson Press (India) Ltd.
Represented by Prabakaran

.. Appellant/Respondent/Complainant

/versus/

Nedunchezhiyan

.. Respondent/Appellant/Accused

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to call for the records of the judgment dated 27.08.2014 in crl.A.45 of 2012 on the file of the Additional District Sessions Judge, Chengalpattu to set aside the same and restore the conviction and sentence of the Judicial Magistrate No.II, Chengalpattu dated 24.08.2012 in C.C.No.116 of 2004.

For Appellant : No appearance

For Respondent : No appearance

J U D G M E N T

There is no representation for the appellant as well as the respondent.

2. This appeal is directed against the order of acquittal passed by the learned Additional District and Sessions Judge, Chengalpattu in C.A.No.45 of 2012 arising from C.C.No.116 of 2004.

3. A private complaint under Section 138 of the Negotiable Instruments Act was allowed by the trial Court. On appeal, the lower appellate Court has reversed the said finding. Aggrieved by that, the complainant has preferred the present appeal.

4. The records reveals that the learned counsel who has filed the appeal on behalf of the appellant, has reported before this Court on 25.01.2018 that they have given consent for change of vakalat. However, there was no fresh vakalat filed on behalf of the appellant. Hence, this Court has directed the Registry to send notice to the appellant. The records of the notice reveals that the Judicial Magistrate No.II, Chengalpattu instead of serving notice to the appellant has served notice to the respondent and the same has been returned with an

acknowledgment. Be that as it may, today neither the appellant nor the respondent are present.

5. The perusal of the impugned order of the lower appellate Court and the trial Court reveal that the appellant herein is carrying business of printing magazine. In the course of the business, accused placed an order for the printing Tamil Nadu Engineering College books with the complainant vide order on 23.04.2003 for a sum of Rs.22,10,000/-. For the said work contract, an advance of Rs.14,99,850/- was paid on 16.05.2003 and later the accused issued a cheque for the balance amount of Rs.7,10,150/- on 05.03.2004 drawn on Indian Bank, in favour of the complainant. When the cheque was presented for collection, it was returned unrealised for want of fund. After issuing statutory notice on 03.08.2004, a complaint has been filed before the trial Court. The trial Court has held the accused guilty and sentenced him to undergo Simple Imprisonment for a period of 6 months and to pay a compensation of Rs.7,10,150/- to the complainant. Aggrieved by the conviction and sentence, the accused has preferred appeal before the Additional District and Sessions Judge, Chengalpattu in C.A.No.45 of 2012.

6. Considering the rival submissions, the lower appellate Court has held that the complainant and the accused were having long standing business transaction. From the complaint, it appears that the cheque given as security has been used to recover money which was not legally enforceable. Taking note of the subsequent invoice raised by the complainant for Rs.2,47,634/- dated 30.06.2004, the lower appellate Court has held that if really there was a long due since 2003, as contended in the complaint, the complainant would have not entertained fresh order and raised invoice in the year 2004. The earlier notice issued by the complainant was suppressed by the complainant. Hence, the accused has discharged the burden by preponderance of probability that the subject cheque was not given for any enforceable debt, but only as a security.

7. Aggrieved by that, the present appeal is filed on the ground that when the accused has admitted the execution of cheque Ex.P1 and the accused never whispered in a reply notice that the cheque was issued only as a security for earlier transaction, the lower appellate Court had erred in holding that the accused has discharged the burden by rebutting the presumption. From the evidence of PW.1 to PW.3 and the Exhibits relied by the complainant, viz., Ex.P1 to Ex.P7 as well as the documents relied on by the accused which were marked as Ex.D1 to Ex.D10, it appears that there was open mutual running account between the complainant and the accused. As a printer, whenever order placed by the accused, the complainant has executed the work, raised invoice and realize the money. In the said course,

the present cheque for Rs.7,10,150/- were returned unpaid.

8. It is contended by the accused that the said cheque was issued as a security. The complainant being a private limited company and had admitted that there was running account between the complainant and the accused. The event pointed out by the accused by preponderance of the probability discharge the reverse burden. So, to positively ascertain that there was enforceable debt, the complainant ought to have filed the statement of accounts which they have failed to produce. The documents such as invoice, earlier payments and the exchange of notice indicates that there was some dispute in the quantum of liability and whether the subject cheque was actually issued for discharge of whole or part of liability is uncertain and disputed.

9. In the said circumstances, the judgment of the lower appellate Court holding that the accused has discharged the burden rebutted the presumption under Section 139 of the Negotiable Instruments Act, whereas the complainant has failed to prove legally enforceable debt is sustainable.

10. In the result, the appeal is dismissed. The judgment of the the Additional District and Sessions Judge, Chengalpattu in CrI.A.45 of 2012, dated 27.08.2014 is hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Judicial Magistrate No.II, Chengalpattu.

2.The Chief Judicial Magistrate,
Chengalpattu.

3.The Additional District and Sessions Judge, Chengalpattu

+1cc to Mr.T.K.S.Gandhi, Advocate sr.31861

CrI.A.No.626 of 2014

kj(co)
nr 08/05/2019