IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.01.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.547 of 2013

NATARAJAN,
S/o.Ganapathi ... Appellant/Complainant

Vs

1.Sree Maruthi Processor,
Represented by its Partner
R.Palanichamy,

2.R.Palanichamy,
S/o.Ramasamy gounder ... Respondents/A1 & A2

PRAYER: Criminal Appeal filed under section 378(4) Cr.P.C., to prefer this memorandum of grounds of criminal appeal against the judgment of the learned District and Sessions Judge cum Fast Track Court, Namakkal in C.A.No.97 of 2010 acquitting the respondents against the judgment of the learned Judicial Magistrate No.2, Namakkal in STC.No.284 of 2009.

For Appellant : Mr.C.D.Johnson

For Respondents : Mr.I.C.Vasudevan

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JUDGMENT
(The case has been heard through video conference)

For the sake of convenience, the Appellant and the Respondent will be referred to as the Complainant and the Accused respectively.

2.The Criminal Appeal has been filed by the Complainant, challenging the Judgment of acquittal made in C.A.No.97 of 2010, dated 03.06.2011 passed by the learned Additional District and Sessions Judge, Fast Track Court, Namakkal, acquitting the Accused 1 & 2, by reversing the Judgment of conviction and sentence passed by the learned Judicial Magistrate No.2, Namakkal, in STC.No.284 of 2009, dated 22.09.2010, for the offence under Section 138 of the Negotiable Instruments Act.

3.The Complainant had filed STC.No.284 of 2009, on the file of the learned Judicial Magistrate No.2, Namakkal, against A1/Partnership Firm and A2/Partner of A1 Firm and A3/Wife of A2/Partner of A1 Firm.

4.Against the said conviction and sentence passed by the learned Judicial Magistrate No.2, Namakkal in STC.No.284 of 2009, dated 22.09.2010, the A1/Partnership Firm and A2/Partner of A1 Firm have filed Criminal Appeal No.97 of 2010, before the learned Additional District and Sessions Judge, Fast Track Court, Namakkal. The Appellate Court, by Judgement dated 03.06.2011, allowed the appeal and set aside the Judgement of conviction and sentence passed by the learned Judicial Magistrate No.2, Namakkal in STC.No.284 of 2009, dated 22.09.2010 and acquitted the Accused. Against which, the present appeal has been filed by the Complainant.

5.The brief facts of the case is that the Complainant was running the business of Poultry and Textiles. The A1/Partnership Firm was engaged in the business of processing of Yarn and A2 and A3 were the partners of A1/Partnership Firm. During the course of the business, the Complainant got in touch with the Accused and that due to the acquaintance, the Accused borrowed a sum of Rs.3,00,000/- from the Complainant, by way of cash on 17.11.2008, for their business needs. Towards of the discharge of the liability, A2/Partner of A1 Firm had issued a cheque bearing Cheque No.959367 drawn on Karur Vysya Bank, Erode Branch, for Rs.3,00,000- from the account of A1/Partnership Firm, which was marked as Ex.P1. The Complainant had presented the cheque for collection on 17.12.2008 in Canara Bank, Thanthathripuram Branch, and it was returned as unpaid on 18.12.2008 stating "Insufficient Funds". The Returned Memo was marked as Ex.P2. The Complainant had informed to the Accused in person and since they had not repaid the said amount, he had sent a legal notice on 30.12.2008, through his counsel which was marked as Ex.P3 and the same was not received by the Accused and that it had been returned to the Complainant. The returned Legal Notice, returned Postal Cover and the Acknowledgement were marked as Exs.P4, 5 and 6, since the accused had not paid the said amount, the Complainant had filed STC.No.284 of 2009.

6.On the side of the Complainant, he examined himself as P.W.1 and marked documents as Exs.P1 to P6. When questioned under Section 313(1)(b) Cr.P.C., the accused denied the charges and on the the side of the Accused, A2 /Partner of A1 Firm and A3 (wife of A2) were examined as D.Ws.1 and 2 and however, no documents were marked on the side of the accused.

7.The Trial Court found A1/Partnership Firm and A2/Partner of A1 Firm guilty for the offence under Section 138 of the Negotiable Instruments Act, imposed a fine of Rs.2,500- on A1/Partnership Firm to be paid by A2/Partner of A1 Firm and in default to undergo Six Months Simple Imprisonment and A2 /

Partner of A1 Firm was sentenced to undergo One Year Simple Imprisonment and A3/Wife of A2 was found not guilty and she was acquitted in STC.No.284 of 2009, dated 22.09.2010. The Trial Court found A1/Partnership Firm and A2/Partner of A1 Firm guilty and convicted them.

8.Against the Judgement of conviction and sentence, A1/Partnership Firm, and A2/Partner of A1 Firm, preferred Criminal Appeal No.97 of 2010, before the learned Additional District and Sessions Judge, Fast Track Court, Namakkal and the Appellate Court, by the Judgement dated 03.06.2011, allowed the appeal and acquitted A1/Partnership Firm, and A2/Partner of A1 Firm. Against which, the present Criminal Appeal has been filed by the Complainant.

9.The learned counsel appearing for the Appellant/Complainant would submit that the Appellate Court erred in acquitting A1/Partnership Firm, and A2/Partner of A1 Firm. The Trial Court having found that the Complainant has proved his case beyond reasonable grounds by convincing evidence had found the accused guilty and convicted them. He would submit that A1 is the partnership Firm and A2 is the partner of A1 Partnership Firm and they have received an amount of Rs.3,00,000/- from the Complainant and they have not repaid the same and thereby, the trial court had rightly convicted A1/Partnership Firm, and A2/Partner of A1 Firm. Whereas, the Appellate Court on flimsy grounds, finding that no notice was issued to A1/Partnership Firm and wrongly finding that the notice was not duly served on A2/Partner of A1 Firm had acquitted A1/Partnership Firm, and A2/Partner of A1 Firm and thereby, he would seek to set aside the Judgement.

10.Per Contra, the learned counsel for the Accused would submit that the A1 is a Partnership Firm and A2 is the partner of A1 Firm. It is the admitted case of the Complainant that the amount has been borrowed for the purpose of business on behalf of the A1/Partnership Firm and the cheque had also been issued from the account maintained by A1/ Partnership Firm. The Trial Court without taking into consideration, the legal aspect of non issuance of notice to A1/Partnership Firm, which had borrowed the money and issued the cheque and non service of notice on A2/Partner of A1 Firm had erroneously convicted A1/Partnership Firm, and A2/Partner of A1 Firm. Whereas, on Appeal, the Appellate Court, rightly finding that no Statutory Notice was issued on the Partnership Firm and finding that the notice was not duly served on A2/Partner of A1 Firm and also finding that the complaint filed against the Accused, under Section 138 of the Negotiable Instruments Act, cannot be maintained against the partners of the Firm without issuing notice to the Firm had rightly allowed the appeal and acquitted the Accused. Further finding that the cheque had been issued by A1/Partnership Firm and without proper notice to the Firm, vicarious criminal liability cannot be fastened on A2, who is the partner of A1 Firm had rightly held that the complaint against A2/Partner of A1 Firm was not maintainable and allowed the appeal. Further, the Appellate Court, had also rightly found that the Complainant had not proved that the notice was served on the accused.

11.In support of his contention, the learned counsel for the Accused relied on the judgements of the Hon'ble Apex Court in Aneeta Hada Vs. Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661 and the Judgement of this court in Crl.O.P.No.13147 of 2015, dated 23.07.2019.

12.Heard the learned counsel on either side, perused the materials placed on record.

13.Admittedly, in this case, A1 is a Partnership Firm and the money had been borrowed by A2/Partner of A1 Firm for the business purpose of A1/Partnership Firm. Further in discharge of the liability, the cheque belonging to A1/Partnership Firm had been issued to the Complainant. The Complainant had not issued notice to A1/Partnership Firm. The Hon'ble Supreme Court in Aneeta Hada Vs. Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661 has settled that a complaint filed under Section 138 of the Negotiable Instruments Act cannot be maintained against a Company/Partnership Firm, without issuance of Statutory Notice to the Company/Partnership Firm. The same proposition has been followed by this Court in Elangovan Vs. Ganesan reported in 2014 (4) MLJ Crl 517 with regard to a Partnership Firm.

14.Admittedly, in this case, finding that no legal notice has been issued to A1/Partnership Firm that too, when the amount had been borrowed for the business of A1/Partnership Firm. The Appellate Court had rightly finding that vicarious liability cannot be fastened on the partner of the Firm without notice to the Firm had rightly allowed the appeal and acquitted the accused. This Court is of the opinion that the Judgement of acquittal needs no interference.

15. In view of the above, the appeal filed by the Appellant/Complainant stands dismissed and the Judgement passed by the learned Additional District Sessions Judge, Fast Track Court, Namakkal in C.A.No.97 of 2010, dated 03.06.2011 stands confirmed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Track Court, Namakkal.

2.The Judicial Magistrate No.2, Namakkal.

3.The Chief Judicial Magistrate, Namakkal

+1cc to Mr.I.C.Vasudevan , Advocate SR.No. 1165

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A.SK(10.03.2021)