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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.933 of 2019

M/s.Indo Swiss Electricals & Enterprises,
Rep. By its Manager,
Mr.Samrat Kishan Rao,
New No.24, Old No.106,
Armenian Street,
Chennai - 600 001.

... Appellant/Respondent

Versus

M/s. RMH Control System,
Rep. By its Proprietor,
Mr.George Henry,
Office at No.T.S.69/3,
SIDCO Industrial Estate,
Ekkattuthangal,
Chennai - 600 097.

... Respondent/Appellant

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order dated 29.04.2019 passed by VI Additional Sessions Judge, City Civil Court, Chennai in C.A.No.370/2018 in set aside the judgment of conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court -IV, George Town, Chennai - 600 001, and discharging the accused from paying the compensation amount of Rs.16,26,189/- in C.C.No.837/2016 dated 21.05.2018 and to restore the order of conviction and sentence and to pay compensation passed by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai - 600 001.

For Appellant : Mr.G.Palani
* * * * *

JUDGMENT

This Criminal Appeal has been filed to set aside the order dated 29.04.2019 passed in C.A.No.370 of 2018 on the file of the VI Additional Sessions Judge, City Civil Court, Chennai,



setting aside the judgment of conviction and sentence dated 21.05.2018 passed in C.C.No.837 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court -IV, George Town, Chennai.

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2. Appellant is the complainant and the respondent is the accused.

3. The appellant filed the private complaint under section 200 Cr.P.C., for the offence under section 138 of the Negotiable Instruments Act, against the respondent before the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.. The learned Metropolitan Magistrate taken the complaint on file in C.C.No.837 of 2016. After completing the enquiry, convicted the respondent for the offence under section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and to pay compensation of Rs.16,26,189/- which is equal to the cheque amount, in default to undergo two months simple imprisonment. Challenging the said judgment of conviction and sentence and award of compensation, the respondent filed appeal before the Principal Sessions Judge, Chennai in CrI.A.No.370 of 2018. The same was made over to the VI Additional Sessions Judge, City Civil Court, Chennai. The learned VI Additional Sessions Judge after hearing the arguments and considered the grounds of appeal and materials, allowing the appeal and set aside the judgment of conviction and sentence and also compensation passed in C.C.No.837 of 2016 by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai. Now challenging the said judgment of acquittal passed by the appellate court, the complainant has filed the present appeal before this Court.

4. Though notice served to the respondent, the respondent appeared through counsel. After some time, since the respondent not appeared, name of the counsel was removed and the name of the respondent also printed in the cause list. Since none appeared for the respondent for long time, heard the learned counsel for the appellant and perused the records.

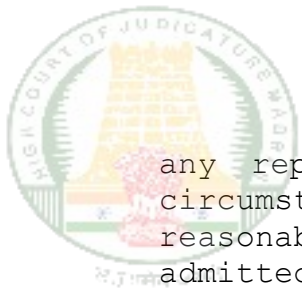
5. Learned counsel for the appellant would submit that the execution of cheque and the signature of the cheque are admitted. Transaction between the appellant and the respondent is also admitted. The only defence taken by the respondent is that the goods sent by the appellant are defect in condition, therefore, the cheque was not returned for want of sufficient fund, instead, it had been returned only for the reason stoppage of payment. Since the goods sent by the appellant are defective,



the respondent gave instructions to the bank for stopping the payment. Therefore, offence under section 138 of Negotiable Instruments Act would not attract. Further, the learned counsel for the appellant would submit that the appellant is only a dealer and he is not the manufacturer and as per the franchise agreement, if any defect is found, they have to send back the defective goods to the manufacturer. The appellant is only the dealer and he is selling the goods only for commission, nothing else. The respondent has not returned back the goods either to the appellant or to the manufacturer. If at all the goods are defective, they should have informed the same to the manufacturer and as per agreement, immediately, they should have returned the same. They should not give instructions to the bank for stopping the payment. If the goods are defective, the manufacturer should have rectify the defects and supply the new goods. The respondent has not done the same. Further, even for the statutory notice also, he has not given any reply. Once he admitted the signature, issuance of cheque and transaction itself, there is a statutory presumption under section 139 of the Negotiable Instruments Act. The cheque is issued for discharging legally enforceable or liability. In this case, since the transaction is admitted and execution of cheque is also admitted, the trial court rightly appreciated the evidence and draw the presumption and allowed the complaint and convicted the respondent. However, the appellate court failed to appreciate the evidence and erroneously set aside the judgment of the conviction and sentence passed by the Magistrate. The reason given by the appellate court for allowing the appeal is perverse and the same is liable to be set aside.

6. Already stated, though given several opportunities, none appeared on behalf of the respondent. Heard the learned counsel for the appellant.

7. Even in the evidence, the respondent admitted that there was a transaction between the appellant and the respondent for more than 10 years. The order for the goods and also based on the invoice and issuance of cheque, the appellant also delivered the goods to the respondent. The respondent also received the goods. The only defence taken by the respondent is that the goods supplied by the appellant is defective. Therefore, the respondent gave instructions to the bank for stopping of payment. However, admitted that the defective goods were neither sent back to the dealer / appellant nor to the manufacturer. Once the signature in the cheque admitted, execution of cheque is also admitted, transaction between the parties are also admitted, supply of goods also admitted, and the respondent also not given



any reply to the statutory notice. Therefore, under these circumstances, the appellant has proved its case beyond all reasonable doubt. Once execution of cheque and transaction are admitted, there is a statutory presumption under section 139 of the Negotiable Instruments Act, which is a rebuttable presumption. The respondent/accused has to rebut the presumption in the manner known to law. ie., by way of preponderance of probabilities. Burden of proof of the accused is not as that of heavy as the complainant. Therefore, the accused always can rebut the presumption by preponderance of probabilities. In this case, since the respondent admitted the execution of cheque and transaction and receipt of all the goods, and also admitted that he has not returned back the defective goods, and not given any reply to the statutory notice, this Court finds that the respondent has to rebut the presumption in the manner known to law. Though the Magistrate rightly appreciated the evidence and convicted the respondent, the appellate court failed to appreciate the evidence and wrongly allowed the appeal and erroneously set aside the order passed by the Magistrate. This Court finds that there is a perverse in re-appreciation of evidence and findings of the appellate court. Normally, in the appeal against acquittal, the appellate court or revisional court will not interfere unless any compelled circumstances or perverse in appreciation of evidence. This Court finds that the appeal is against acquittal, though the trial court rightly appreciated the evidence, the appellate court failed to appreciate the evidence legally as well as factually. Finding of the appellate court is perverse. Therefore, the judgment of the Appellate court is liable to be set aside and the judgment of the Magistrate is liable to be restored.

8. For the reasons aforesaid, the judgment dated 29.04.2019 passed in CrI.A.No.370 of 2018 is set aside and the judgment dated 21.05.2018 passed in C.C.No.837 of 2016 is restored. Resultantly, the Criminal Appeal is allowed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1. The VI Additional Sessions Judge,
City Civil Court,
Chennai.

2.-do-thro Principal Sessions Judge,
Egmore, Chennai.

3. The Metropolitan Magistrate,
Fast Track Court-IV,
George Town,
Chennai - 600 001.

4.-do-Thro Chief Metropolitan Magistrate,
Egmore, Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.G.Palani, Advocate SR.No.50793

CRL.A.No.933 of 2019

VG-II(CO)
CB(02/03/2022)