IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2022

C O R A M

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRIMINAL APPEAL NO.480 OF 2015

M/s.Goval Associates,
a Partnership Firm
rep. by Manager and
Power of Attorney Agent,
Mr.Devaraj
Having office at
S.F.No.1/1C, Pichampalayam
Thazhigaikadu Thottam,
Pichamapalayam Puthur Post,
Tiruppur.

... Appellant

-Vs-

Intex Yarns,
Rep. by its Proprietor,
A.Ananda Kumar,
58/5, S.S.Nagar 1st Street,
Thiruneelakandapuram, Tiruppur.

... Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure praying to call for the records and set aside the judgment passed in C.A.No.53/2013 by the Principal Sessions Judge, Tiruppur on 19.03.2014 by setting aside the Judgment passed in S.T.C.No.1246/2010 by Judicial Magistrate-I, Tiruppur dated 28.06.2013.

For Appellant : Mr.Ayyappa Raja
for Mr.R.Bharath Kumar

For Respondent : Mr.V.Ashok Kumar

J U D G M E N T

This Criminal appeal has been preferred challenging the judgment of the learned Principal Sessions Judge, Tiruppur dated 19.03.2015 made in C.A.No.53 of 2013.

2. The appellant before this Court was the complainant before the trial Court. The case has arisen out of a complaint preferred by the appellant on the allegation that on 16.04.2009, the respondent/accused has purchased yarns for Rs.4,24,566/- on credit basis from the complainant, towards discharging the above amount, the respondent has issued a cheque dated 30.05.2009 for a sum of Rs.4,24,560/-; when the cheque was presented for collection on 31.08.2009 with his bank Central Bank of India, Tiruppur Branch and the same was returned for "Insufficient Funds"; subsequently, he sent a legal notice to the respondent by demanding the cheque amount and the same was received by the accused, but he did not send any reply; neither he paid the cheque amount; after complying all the legal mandates, the appellant has filed the complaint against the respondent for the offence punishable under Section 138 Negotiable Instruments Act for dishonor of cheque.

3. After the case was taken on file and on being satisfied with the materials available on record, the learned Trial Judge questioned the accused for the offence under Section 138 Negotiable Instruments Act. Since the respondent pleaded innocence and claimed to be tried, trial was conducted.

4. During the course of trial, on the side of the complainant, three witnesses have been examined as PW1 to PW3 and 9 documents were marked as Exs.P1 to P9. When the incriminating materials surfaced from the evidence of the complainant was put to the accused under Section 313 Cr.P.C, he denied the same. On the side of the defence no witness was examined and no document was marked.

5. At the conclusion of trial and on considering the evidence on record, the learned trial Judge found the accused guilty for the offence under Section 138 Negotiable Instruments Act and convicted and sentenced him to undergo Rigorous Imprisonment for One Year and also imposed a fine of Rs.5,000/- in default to undergo Simple Imprisonment for One Month. A compensation of Rs.4,24,560/-, which is equivalent to the cheque amount was also awarded. The accused challenged the judgment of the trial Court and preferred an appeal before the learned Principal Sessions Judge, Tiruppur in C.A.No.53 of 2013. The learned Principal Sessions Judge had allowed the appeal on 19.03.2014 by reversing the judgment of the trial Court. Aggrieved over that the complainant has preferred the present appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent. Perused the entire materials available on record.

7. The learned counsel for the appellant submitted that the appellant had proved his case by producing the invoice through which the respondent has purchased yarns and the statement of account to show the impugned transaction; the respondent did not deny his signature in the impugned cheque and hence, he is entitled to the initial presumption under Section 139 of Negotiable Instruments Act; however, the commercial tax deducted for the purchases made by the respondent from the appellant for the month of April 2009 has also been marked as Ex.X1 by examining an officer from the Commercial Tax Department as PW2; despite the trial Judge has properly appreciated the materials available on record and applied the principles of law rightly, the learned Principal District Judge misguided himself and reversed the judgment on some wrong premises; since the respondent/accused did not refute the evidence of the appellant by way of giving satisfactory rebuttal proof, the initial presumption drawn in favour of the appellant ought to have been accepted as conclusive proof; hence, the appeal should be allowed.

8. The learned counsel for the respondent submitted that the appellant has not produced any evidence to show that the goods involved in Ex.P2-Invoice dated 16.04.2009 was actually delivered to him; the account statement of the appellant would show that there was no credit given on 30.05.2009 for issuing the alleged cheque by the respondent/accused. It is seen from Ex.X1 that there is a discrepancy in the value of the purchase of goods; since it is alleged by the appellant that in the month of April 2009 the respondent had purchased two items of yarns for a sum of Rs.1,72,620/- and Rs.4,24,560/- totalling to Rs.5,97,186/-, but in Ex.X1 the total sum is shown as Rs.5,74,260/-; the learned Appellate Judge has noted this difference and given the benefit of doubt to the respondent/accused and considered the discrepancy as a rebuttal proof in favour of the respondent/accused; since the appellant had failed to prove before the Court that the impugned cheque has been issued for a legally enforceable debt or liability, it is right for the Appellate Court to reverse the judgment of the trial Court and find the accused not guilty for the offence under Section 138 of Negotiable Instruments Act.

9. The fundamental facts that the appellant and respondent are known to each other and they had business transaction between themselves cannot be denied. From the evidence of PW2/Commercial Tax official, it is seen that a sum of Rs.22,969/- has been deducted as Value Added Tax as against the purchases made by the respondent/accused for the month of April 2009. The respondent/accused has contended that the said amount has been paid by the appellant by knowing the secret number

assigned to the accused and hence on the footing of Ex.X1, it cannot be proved that the goods involved in Ex.P2 has been delivered to him. In the cases filed under Section 138 of Negotiable Instruments Act, the complainant has to produce prima facie proof to show the genuineness of the transaction. It is not obligatory on the part of the complainant to produce the evidence akin to the claim for recovery of money in a civil suit filed before a civil Court.

10. Ex.P2-invoice would show that the accused has purchased yarns for a sum of Rs.4,24,560/- on 16.04.2009. It is alleged by the appellant that the impugned cheque was given to them on 30.05.2009. Eventhough the cheque was not credited in the account of the respondent/accused, maintained by the complainant on 30.05.2009 itself, due credit was given on 31.08.2009, when the cheque was presented for collection. Since the cheque was returned for "Insufficient Funds", the said amount was shown under debit on 01.09.2009. Ex.P3-statement of accounts produced by the appellant coupled with Ex.P2-Invoice and the impugned cheque would show that the purchase transaction to the tune of Rs.4,24,560/- had happened on 16.04.2009.

11. If the drawer of the cheque does not deny his signature in the cheque, the holder of the cheque is entitled to get the initial presumption that the impugned cheque has been given only for a legally enforceable debt or liability. The reverse burden is on the respondent/accused to prove that the cheque in question was issued not for any legally enforceable debt or liability. In case on hand, the respondent/accused has submitted that during the business transactions the parties used to give blank cheques by way of security and the impugned cheque was also given only in that context. It is further submitted that the appellant/complainant had misused the same by filling it according to his wishes and filed the case.

12. It may be true that during the business transactions the blank cheques would be issued by the parties as security. In the case on hand there is an invoice dated 16.04.2009 to the purchase transaction to the tune of Rs.4,24,566/- towards purchase of yarns by the respondent/accused. At that time or even before purchasing the goods, it would have been possible for the respondent/accused to give a blank cheque as security. But, once the goods are purchased for a specific value and if the purchaser fails to pay the same, then the holder of the cheque has got the right to fill up the cheque and use it against the purchaser for realising the sale price.

13. Admittedly, the purchase made vide Ex.P2 is a credit purchase. It is not the case of the respondent/accused that he

had paid the sale price for the goods supplied vide Ex.P2. His only contention is that the goods were not supplied to him and the cheque was issued only by way of security. Ex.X1 would show the tax element for the purchase transaction on the purchase was remitted against the account of the respondent to the Commercial Tax Department, the genuineness of the transaction cannot be disputed. Under such circumstances, it goes without saying that the respondent/accused is liable to pay the sale price. Since it is not unusual to make payments by way of issuing cheques, the impugned cheque is used by the appellant towards realising the invoice amount by putting it for collection. As per Section 20 of the Negotiable Instruments Act, the bearer of the cheque is at liberty to fill up the details of the cheque, if a person signs and delivers a negotiable instrument. In that case, the person so signed the cheque shall be liable for the amount mentioned in the cheque.

14. It is neither the contention of the respondent/accused that he had issued the cheque to someone else other than the appellant. It is seen from the judgment of the learned Appellate Judge that he got misguided about two purchase transactions made to the tune of Rs.1,72,620/- and Rs.4,24,566/- respectively. Since the total amount arrived in Ex.X1 for the purchases made by the respondent for the month of April 2009 has been entered as Rs.5,74,260/- instead of Rs.5,97,186/-, the learned Appellate Judge raised a suspicion about the impugned transactions. If Rs.22,969/- which has been deducted towards Value Added Tax is added to Rs.5,74,260/-, it would show that there is no discrepancy in arriving at the right figure i.e., Rs.5,97,186/-. The learned Trial Judge had omitted to take the Value Added Tax also as part of the invoice and misled himself. It is further submitted by the counsel for the respondent/accused that the complainant is not authorised to represent the appellant's Firm and he is not a fit person to depose evidence on behalf of the Firm.

15. PW1 is none other than the Manager of the Firm to whom the power has been given by the Directors of the Firm to represent the cases. Though PW1 might not be the Manager at the time of the transaction, he would have got appointed subsequently. In the Firms/Companies, the employees would change from time to time, but the institution remains. Just because there is a change in the person who hold the post of Manager, it cannot be stated that the present Manager is not the authorised person to represent the authorised Firm. It is submitted by the learned counsel for the respondent/accused that some of the Directors of the Company has not signed the authorisation given to PW1 and there is no document to show that PW1 has also accepted the power given to him. Neither the

appellant-Firm nor PW1 has disputed about the power given to him to represent the Firm. In this background of facts, it cannot be claimed that the respondent/accused had discharged his reverse burden and refuted the initial presumption that has been drawn in favour of the appellant.

16. Despite the learned Trial Judge had rightly appreciated the evidence on record and found the accused guilty for the offence under Section 138 Negotiable Instruments Act, the learned Appellate Judge has misguided himself and reversed the findings on some wrong understanding.

17. The learned counsel for the respondent/accused submitted that PW1 himself has admitted that in the month of April 2009, a sum of Rs.4,80,216/- has been paid by the respondent and hence he has the right to get that sum deducted from his dues. It is to be noted that the respondent/accused never claimed that he had made partial repayment towards the impugned purchase made vide Ex.P2-invoice, but he denied his very liability towards Ex.P2 purchase. It is seen in Ex.P3, account of the accused that on 21.04.2009 vide cheque no.038400 a sum of Rs.3,07,596/- has been paid and credited and on 27.06.2009 vide cheque no.038476 Rs.1,72,620/- has been paid and credited. If these two amounts are added, it would come to Rs.4,80,216/-. In the evidence of PW1 he has stated that he received Rs.4,80,216/- in the month of April 2009 itself. But the fact that the total amount of Rs.4,80,216/- has been received on two dates vide 21.04.2009 and 27.06.2009 respectively. It has not shown before the Court as to how the payment of Rs.3,07,576/- has got only relevance to the purchase made through Ex.P2. The account statement of the complainant would show that the purchase of Ex.P1 is still pending.

18. In the result, this Criminal Appeal is allowed and the judgment of the learned Principal Sessions Judge, Tiruppur, passed in C.A.No.53 of 2013 is hereby set aside. The respondent/accused is found guilty for the offence punishable under Section 138 of Negotiable Instruments Act. The trial Court is directed to secure the accused to undergo the punishment imposed by the trial Court.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Principal District Sessions Judge,
   Tiruppur.

2. The Judicial Magistrate-I,
   Tiruppur.

+1cc to M/s.R.Bharath Kumar, Advocate, S.R.No.7231

Criminal Appeal No.480 of 2015

SPD(CO)
RLP(31/03/2022)