IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM:

THE HONOURABLE Dr.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.518 of 2015

M/s.Cotton Blossom (India) Pvt.Ltd.,
Rep.by Authorized Person B.Cyril Kanagaraj .. Appellant

/versus/

V.Narayanasay .. Respondent

Criminal Appeal has been filed under Section 372 of Criminal Procedure Code praying to set aside the order passed by the learned I Additional District and Sessions Court, Tiruppur dated 10.03.2015 in Criminal Appeal No.32 of 2014 and reversing the order dated 24.06.2014 passed by the learned Judicial Magistrate Court No.1, Tiruppur in C.C.No.382 of 2012 and convict the respondent/accused for offence under Section 138 of Negotiable Instruments Act case.

For Appellant : Mr.Jose John

For Respondent : No appearance

JUDGMENT

Heard the learned counsel for the appellant. Notice sent to the respondent returned with an endorsement "No such addressee".

2. This Criminal Appeal is preferred by the *de facto* complainant being aggrieved by the acquittal judgment of the lower appellate Court by reversing the judgment of the trial Court holding the respondent guilty of offence under Section 138 of Negotiable Instruments Act.

3. This is a case of dishonouring of the cheque issued by the respondent to the appellant for a sum of Rs.56,93,064/- to discharge the liability arise towards goods sold and delivered.

4. According to the appellant/complainant, the respondent used to purchase the yarn from the complainant on credit basis. It is a mutual open running account. The complainant supplied yarn under various invoices and as on 24.12.2009, the total balance payable by the respondent/accused was Rs.56,93,064/-. For more than 2 years, the accused did not clear the balance. Hence on 17.11.2011, notice was issued calling upon the accused to pay the balance amount as per the ledger account. The accused received the notice and in response to the notice gave subject cheque dated 28.01.2012 for a sum of Rs.56,93,064/- drawn on Oriental Bank of Commerce in favour of the complainant company. While so, the said cheque was presented for collection on 30.04.2012, but was bounced with an endorsement “Fund Insufficient”. Hence, statutory notice was caused to the accused/respondent, he refused to receive the notice. The notice returned with an endorsement “Refused”. On return of notice with the endorsement refused, cause of action to file complaint has arisen. Hence the complaint under Section 138 of Negotiable Instruments Act.

5. To prove the complaint, on behalf of the *de facto* complainant, three (3) witnesses were examined as PW.1 to PW3. PW.1 is a person authorized by the complainant company to represent them.

PW.2 and PW.3 are the officers attached to the Commercial Tax Department. Ex.P1 to Ex.P8 were marked through PW.1. Court exhibits Ex.C1 & Ex.C2 were marked through official witnesses.

6. The trial Court, taking note of the fact that the cheque drawn by the accused and the statement of account marked as Ex.P2 reflects the transaction and money due and payable to the complainant, held the accused guilty of offence under Section 138 of N.I.Act, sentenced him to undergo 2 years Simple Imprisonment and paying the cheque amount as compensation.

7. Aggrieved by the judgment of the trial Court, the accused/respondent preferred appeal before the learned I Additional District and Sessions Judge, Tiruppur in C.A.No.32 of 2014. The said appeal was allowed on 10.03.2015 on the ground that the complainant has failed to prove the subject cheque was issued to discharge the enforceable liability.

8. Having taken note of the fact that Ex.P2 [the ledger account], Court exhibits Ex.C1 [Sales Tax returns] and Ex.C2 [VAT documents] indicating for the goods sold to the accused, the complainant has paid tax at the relevant point of time, the lower appellate Court had concluded that these evidences are not sufficient to prove the debt. In the absence of invoices and proof of delivery of goods, the lower appellate Court has doubted the existence of debt. Further, the authorization given to PW.1 to represent the complainant company as doubted, since the letter of authorization Ex.P1 does not specifically authorised him to represent the company in the criminal complaint lodged against the respondent/accused.

9. Being aggrieved by the order of acquittal passed by the lower appellate Court, the present appeal is filed by the *de facto* complainant.

10. The learned counsel for the appellant/complainant would submit that Ex.P1 is the Board Resolution which reads as below:

> *"RESOLVED THAT the board of Directors of the company is hereby accords its approval*

for initiation of Criminal complaint against the cheque returned cases on behalf of the company.

FURTHER RESOLVED THAT Mr.B.Cyril Kanagaraj, S/o.K.Benjamin, aged about 29 years residing at 1/370A, Bethel Cottage, G.V.N.Nagar, TEA Nagar Post, SIDCO, Tirupur 641606 working as a cashier is hereby authorized to initiate necessary proceedings and legal actions for the above said purposes and also hereby authorized to verify and sign the pleadings as the authorized signatory of the company before the Court of law"

11. It is an authorization given to PW.1 to initiate criminal complaint in respect of any cheque return cases, on behalf of the company. Further PW.1 in his deposition has categorically stated that he is aware of the transaction and spoken about the circumstances under which the cheque was issued and therefore, the reason assigned by the lower appellate Court to disbelieve the case of the prosecution is a illusory and non existing reason.

12. Further, the learned counsel for the appellant submitted that while the accused had given the cheque after receiving the notice Ex.P3 dated 17.11.2011 and while the accused has not denied the issuance of cheque, when he was called upon to pay the cheque amount, which was returned for want of fund, the observation of the lower appellate Court that the complainant failed to prove the cheque was issued for legally enforceable debt. The accused neither pay the money nor reply to the statutory notice. Even prior to the issuance of cheque, notice was issued to him stating that for long time over and above Rs.50,00,000/- is due and if he fails to pay, suitable action will be taken against him. In response to the said notice Ex.P3, the accused gave the subject cheque Ex.P5 to discharge the admitted liability. While so, the presumption of enforceable debt as contemplated under Section 139 of N.I.Act being fully satisfied by the complainant through oral and documentary evidence. The accused has not made out any case to probabilise his defence. He was rightly convicted by the trial Court, but for wrong reasons, the judgment of the trial Court reversed by the lower appellate Court.

13. Heard the learned counsel for the appellant. Records perused and the reason given by the lower appellate Court for acquitting the accused is scrutinised.

14. The accused/ the respondent herein no where denied the contractual relationship between him and the complainant. The supply of goods and its value are reflected in Ex.P2, also through Court exhibits Ex.C1 and Ex.C2.

15. In the said circumstances, non production of invoices and proof of delivery of goods are not significate to gain relevancy. When the accused himself has not taken plea that the goods were not delivered to him or subject cheque was not issued by him, the reason assigned by lower appellate Court for reversing the well considered judgment of the trial Court appears to be an imaginary reason not found in any record either by way of reply notice or pleadings. No doubt the accusation in Section 138 N.I.Act, need not discharge his onus by proof beyond doubt, mere preponderance of probability is sufficient. But, such preponderance of probability must have some basis to believe. A fictitious probability will not discharge the onus.

16. When the ledger account coupled with sales tax return documents clearly indicates the sale of goods by the complainant in favour of the accused, to prove the contra, the accused should have produced some evidence that the alleged transaction are not true or not in connection with his firm. The issuance of cheque having been admitted and liability for which the cheque is issued been established through Ex.P2, Ex.C1 and Ex.C2. Section 139 of N.I.Act., squarely gets attracted in this case. To rebut the presumption, there is no iota of material placed by the accused. However, the lower appellate Court has reversed the judgment of the trial Court.

17. The lower appellate Court has found defect in the authorization marked Ex.P1, which is extracted in para 9 of this order. It authorises PW.1 to represent the complainant company in the criminal cases initiated for cheque dishonouring. The law does not mandates that such authorization must be for each and every individual cases. When the general power is given to a person to represent the company and initiate criminal proceedings, for want of specific authorization to that particular case cannot vitiate the criminal trial. The lower appellate Court erred in holding that Ex.P1, which is not a specific authorization to initiate instant complaint will not enable PW.1 to sustain the complaint. The said observation of the lower appellate Court is erroneous.

18. For the above reasons stated, this Court finds manifest error in the judgment of the lower appellate Court over looking the provisions of Negotiable Instruments Act and law of evidence, hence, it deserves to be set aside.

19. Accordingly, this Criminal Original Petition is allowed. The judgment of the lower appellate Court is set aside. The trial Court is directed to secure the accused to undergo the sentence imposed.

22.11.2022

Index : yes/no
Internet:yes/no
Speaking order/ Non speaking order
rpl

To

1.The I Additional District and Sessions Court, Tiruppur

2.The Judicial Magistrate Court No.1, Tiruppur

Dr.G.JAYACHANDRAN,J.

rpl

Crl.A.No.518 of 2015

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