

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1082 OF 2007

JUDGMENT:

1. This appeal is filed against the order of acquittal in CC No.1677 of 2003 dated 03.08.2007 passed by the XI Additional Chief Metropolitan Magistrate at Secunderabad.

2. The case of the complainant/appellant is that the appellant firm is a proprietary concern, selling tractors. The respondent/accused approached the appellant and took supply of tractors on credit basis. Towards repayment of the due, out of the sale transactions, the respondent issued Ex.P2 cheque bearing No.528664 and when the same was presented for clearance, it was returned for the reason of 'exceeds arrangements'.

3. After examination of the witnesses produced by the appellant, the learned Magistrate found the respondent not guilty for the following reasons; i) telegram notice will not satisfy the requirement of statutory notice under Section 138 of the Negotiable Instruments Act and it should be followed by a letter of confirmation; ii) The telegram notice was sent on 11.07.2003, but the confirmation was

sent on 08.08.2003 after a lapse of 28 days, which is beyond 15 days from the date of return of the cheque; iii) If the confirmation is notice taken into consideration, it is beyond the statutory period of sending notice; iv) When there is no proper and valid service of notice, there cannot be any valid cause of action.

4. Learned counsel for the appellant submits that the trial Court has committed an error in acquitting the respondent when the issuance of cheque was not disputed. Once the issuance of cheque and signatures are not disputed, a presumption arises under Section 139 of the Negotiable Instruments Act and in support of his contentions, Counsel relied upon the judgments in the cases of:

i) **Sumeti Vij v. Paramount Tech Fab Industries¹**; ii) **Gadela Vasantha v. Cybermate Infotek Ltd.,²**; iii) **Yoginder Kumar Sharma v. Ashok Kumar Sharma³**; iv) **Gold Field Steels Pvt. Ltd., v. Sanjay Alloys Pvt. Ltd.,⁴** v) **Pattabirama Reddy v. Nageshwara**

¹ AIR 2021 SC 1281

² 2012(1) ALD (Cri) 865

³ Criminal Misc.(Main).362/1996 decided on 27.05.1999

⁴ ILR 2013 Karnataka 1607

Reddy⁵; vi) **H.M.Brothers Pvt. Ltd., v. R.Monsing and sons Pvt. Ltd.**,⁶; vii) **C.H.V.Appa Rao v. A.R.K.Film Enterprises**⁷. He further submits that sending of telegram is a valid notice since the certified copies of a telegram were filed into the Court under Ex.P5. When the said telegram was sent to the correct address, presumption under Section 27 of the General Clauses Act is raised and it has to be deemed service of notice. The confirmation letter being issued after the statutory period is of no consequence. In the said circumstances, the finding of the learned Magistrate has to be reversed.

5. On the other hand, learned counsel for the respondent submits that merely issuing of a telegram is not sufficient unless a confirmation letter is issued and that too within the statutory period prescribed under Section 138 of the Negotiable Instruments Act. Once the confirmation letter was issued after the period prescribed time, there is no valid notice and for the reason of there being no valid notice, prosecution cannot be launched under

⁵ 2001 (2) ALT (CRI.) 493

⁶ Criminal OP Nos.9894 to 9896 of 1993

⁷ CrI.O.P.No.28077 of 2006 and M.P.No.1 of 2006

Section 138 of Negotiable Instruments Act. The other ground urged by the learned counsel for the respondent is that there is no personal knowledge of P.W.1 about the transactions in between the appellant firm and the respondent, as such, launching of prosecution by the GPA-P.W.1 is also not valid. Finally, the learned counsel for the respondent argued that the Courts at Hyderabad have no jurisdiction, since both the complainant company and the respondent are residents of Haryana and deliberately, the GPA holder has filed the complaint at Hyderabad. In support of his contentions, he relied on the following judgments: i) **Angu Parameswari Textiles (P) Ltd., v. Sri Rajam** decided on 24.01.2001 by Madras High Court; ii) **SIL Import, USA v. Exim Aides Silk Exporters, Bangalore**⁸, wherein the Hon'ble Supreme Court held that sending of notice by fax is permissible. However, the limitation period starts from the date of receipt of fax notice and not from the date of second notice sent under registered post. Accordingly, complaint was set aside for not having jurisdiction to take cognizance after the prescribed period; iii) **District Magistrate**

⁸ (1999) 4 Supreme Court Cases 567

v. G.Jothisanker⁹, wherein the Hon'ble Supreme Court held that telegram itself is not an authenticated document unless the telegram is confirmed by a subsequent confirmation letter; iv) **M.Murugan v. Queen Jhansi Vetrikodi**¹⁰, in which, the Madras High Court held that when the telegram was not authenticated by a subsequent letter within the period of limitation, the telegram by itself cannot be construed as a statutory notice. He lastly submits that all the legal heirs have not made an application to prosecute the appeal, for which reason, the application permitting one legal heir to prosecute the case has to be dismissed.

7. Admittedly, the telegrams were sent within the specified time, however, the confirmation letter was beyond the date of statutory period of sending of notice. In the said circumstances, it cannot be said that the telegram being sent within the statutory period was in compliance of the notice to be issued under Section 138 of the NI Act. In the absence of the confirmation letter, which has to follow the telegram and said confirmation Ex.P6 letter was given on

⁹ 1993 LawSuit (SC) 576

¹⁰ 2004 LawSuit(Mad) 287

08.08.2003 under the postal receipt Ex.P9 dated 09.08.2003, the said date of sending the telegram notice is clearly beyond the statutory period of 15 days. For the said reason, taking cognizance by the Court is bad in law.

8. The objection of the respondent that all the legal heirs have to collectively come on record to prosecute the appeal has no legal basis. The case under section 138 NI Act is quasi criminal in nature to decide the liability of the accused therein and prosecuting the case will not decide any rights or claims of legal heirs. For the said reason it is sufficient compliance that any one of the legal heirs approaches the Court seeking permission to prosecute the appeal.

9. For the aforementioned reasons, the Criminal Appeal is liable to be dismissed and accordingly dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 17.08.2022
kvs

HON'BLE SRI JUSTICE K.SURENDER

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Dated: 17.08.2022

