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CRL.A.No.678 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 13.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.678 of 2016

M/s.Megha Agrotech Pvt. Ltd.,
Represented by its Managing Director,
R.Prasad : Appellant/Respondent/Complainant
-vs-

Ambikapathy : Respondent/Appellant/Accused

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C., praying to set aside the order of acquittal dated 27.07.2015 made in Criminal Appeal No.33 of 2014 on the file of the learned Additional District and Sessions Judge, Krishnagiri at Hosur reversal of conviction imposed in the judgment dated 09.06.2014 made in S.T.C.No.225 of 2013 on the file of the learned Judicial Magistrate, FTC, Hosur.

For Appellant : Mr.Krishna Ravindran
for Mr.J.Jawahar

For Respondent : Mrs.S.Varsha
Legal Aid Counsel



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JUDGMENT

The appellant has filed this Criminal Appeal against the order of acquittal in Criminal Appeal No.33 of 2014, dated 27.07.2015 on the file of the learned Additional District and Sessions Judge, Krishnagiri at Hosur and by confirming the conviction imposed in the judgment dated 09.06.2014 made in S.T.C.No.225 of 2013 on the file of the learned Judicial Magistrate, FTC, Hosur.

2.The complainant in S.T.C.No.225 of 2013 is the appellant herein.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. The appellant herein has filed the above S.T.C.No.225 of 2013 on the strength of Ex.P1 (cheque) dated 10.05.2013 for a sum of Rs.36,35,730/- and the cheque was returned. Thereafter, the appellant has preferred to issue notice under Ex.P.2 and also issued legal notice under Ex.P.3 and after the acknowledgement, he has filed the complaint. After



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formalities, the respondent/accused entered appearance.

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5. During trial, the complainant examined himself as P.W.1 and Manager of the Bank was examined as P.W.2 and Ex.P.1 to Ex.P.26 were marked. On behalf of the accused, he examined himself as D.W.1 and marked Ex.D.1 to Ex.D.13. Based upon the oral and documentary evidence adduced before the Court below, the learned Judicial Magistrate, FTC, Hosur has held that the complainant is entitled for presumption under Section 139 of the Negotiable Instruments Act and the accused has failed to rebut the statutory presumption and accordingly, laid the conviction.

6. Aggrieved against the said conviction and sentence, the accused has moved Criminal Appeal No.33 of 2014 before the learned Additional District and Sessions Judge, Krishnagiri at Hosur and the same was allowed on 27.07.2015 and the accused was acquitted. As against the order of acquittal passed in Criminal Appeal No.33 of 2014, the present appeal has been filed by the complainant.

7. Heard Mr.Krishna Ravindran, learned counsel appearing for the appellant and Mrs.S.Varsha, Legal Aid Counsel appearing for the



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respondent.

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8. After hearing the rival submissions and also perusing the documents placed before this Court, this Court finds that against the reversal of conviction, this appeal has been filed by the complainant.

9. The case of the appellant is that it is a manufacturer of drip irrigation system materials and is a Registered MSME. The respondent is dealing with the selling of drip irrigation and other materials in Krishnagiri and other districts. The appellant supplies material on credit basis and the respondent sells the same in the market and collects the money and has failed to remit payment to the appellant. The respondent purchased materials from the appellant under various invoices. Towards discharge of the said liability, the respondent issued a cheque bearing No.274148 dated 10.05.2013 in favour of the appellant for a sum of Rs.36,35,730/-. The appellant had presented the cheque with its banker for collection on 15.05.2013. To its shock and surprise the same was returned as 'drawer signature differs'. Therefore, the appellant issued a legal notice to the respondent dated 07.06.2013 calling upon him to make the payment on the



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above cheque within 15 days from the date of receipt of the notice.

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10. It is seen from Ex.P.3, legal notice dated 07.06.2013, the same was duly served upon the respondent on 10.06.2013. On receipt of the said notice, the respondent did not pay any payment or reply to the notice in time and it appears that the appellant has filed a complaint before the learned Judicial Magistrate, FTC, Hosur and the same was taken as cognizance.

11. A perusal of Ex.P.2. and Ex.P.3 and Ex.P.15 reply notice, goes to show that Ex.P.1 cheque was returned due to variance in signature, the difference comes under the purview offence under Section 138 of the Negotiable Instruments Act. It may be pertinent to point out that in any case even if the signature was in order, the cheque would have been dishonored as there was no sufficient funds in the account. This has later been proved through evidence. Hence, both the Courts below have rightly come to the conclusion that the execution of cheque and statutory presumption under Sections 108 and 139 of the Negotiable Instruments Act, the appellant is entitled for such a statutory presumption. The appellant has proved the issuance of the cheque and in view of the statutory presumption, the burden



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lies upon the respondent/accused to rebut the presumption by adducing the cogent evidence not merely by mere explanation and fair denial.

12. At this juncture, it remains to be stated that the respondent/accused had not replied to the notice on time. The respondent has not taken any steps to recover the cheque if there was no liability and had discontinued conducting business with the appellant. Per contra, he took the defence that he issued the cheque for security purpose. This was not believed by the trial Court as well as the lower Appellate Court.

13. On a close perusal of the oral and documentary evidence, I find that the respondent did not refuse the case of the appellant in his chief examination and he took defence stating that the case was filed with other ulterior motive to deny payment of sales commission which was allegedly due to him.

14. On close scrutiny of D.W.1, the respondent has admitted in his cross-examination that the appellant company branch was operating in the



respondent's premises. Further, he admits that all materials destined for Hosur were initially received at the respondent's premises before they were supplied to others. Further, the appellant, to prove the supply of materials, through Ex.P.6 to Ex.P.13, invoices and E.Sugam forms, Ex.P.16 to Ex.P.23. The *modus operandi* is the same as shown by the respondent's exhibit marked as Ex.D6. He further admits that the details (Address, TIN Numbers) mentioned in the invoices and forms belong to him.

15. The prime point raised by the defence is that initially he accepted handing over of the cheque. However, during the evidence, he has pleaded that the cheque was given to the appellant in the year 2000 for security purpose. On perusal of the oral evidence of P.W.2 (Bank Manager), she has stated that as per Ex.P.24 to Ex.P.26, the account itself is opened only in the year 2011, thereby the evidence of D.W.1 has necessarily to be rejected. When the account from which, Ex.P.1 cheque was issued, which was opened in the year 2011, this Court has no hesitation to disbelieve the version of D.W.1 in the witness box that he handed over the cheque to the appellant in the year 2000 for security purpose.

16(a). This Court has noted that for the legal notice under Ex.P.3, the accused has not replied the notice on time. The



respondent/accused has not taken any steps to recover the cheque if there was no liability or discontinued the conducting business with the appellant and further it is to be noted that the respondent marked various exhibits to prove the *modus operandi* of earlier purchases but nothing pertaining to the transaction in question.

16(b). The respondent, in his cross-examination, has admitted that the purchase orders and other defence documents of the respondent did not contain any signatures, which was not credible enough to prove that the respondent has no liability with the appellant. The respondent has admitted in his cross examination, the *modus operandi* followed by Ex.P.6 to Ex.P.13 and Ex.P.16 to Ex.P.23 which are invoices and stock transfer challans. The said *modus operandi* is the same as shown by the respondent's exhibit marked as Ex.D.6. He further admits that the details (Address, TIN Numbers) mentioned in the invoices and forms belong to him. Hence, this Court finds that there is no evidence let by the respondent that the cheque was issued only for security purpose. Thus, the defence raised by the respondent also fails to ground for the reasons discussed in the preceding paragraphs.



16(c). Further with regard to the supply of materials as stated *supra*, the transactions have been duly reflected in the prosecution witnesses as Ex.P.16 to Ex.P.23 and hence, this Court finds that the respondent has not raised any question or suggestion regarding denial of his existing liability and there is no cogent evidence produced by the respondent to handing over the cheque to the appellant for security purpose.

17(a). The ratio laid down in the Hon'ble Apex Court in ***T.P.Murugan Vs. Bojan*** reported in **(2018) 8 SCC 469** has held that the rebuttal of presumption must be proved by adducing credible evidence. Mere raising a doubt sans cogent evidence, with respect to the circumstances, presumption under Section 139 of the Negotiable Instruments Act cannot be discharged.

17(b). Further, the Hon'ble Apex Court has also held in ***Rohitbhai Jivanlal Patel Vs. State of Gujarat and another*** reported in **(2020) 3 SCC (cri) 575** that the accused leads evidence to rebut presumption by probable defence is not adequate.

17(c). Hence, this Court has no hesitation to hold that in view of



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the discussion in the preceding paragraphs, the appellant is entitled for statutory presumption and in the absence of any positive evidence much less any evidence to rebut the statutory presumption by the accused, the charge under Section 138 of N.I. Act stands proved and hence, the reasoning rendered by the lower Appellate Court stands vacated and the same is set aside.

18. In view of the forgoing discussions, this Court holds that the appellant has produced sufficient material in support of the charge and the respondent has not let in any positive evidence to rebut the presumption. Consequently, the conviction and sentence passed by the trial Court is hereby restored.

19. In the result, this Criminal Appeal is allowed and the order of acquittal passed in Criminal Appeal No.33 of 2014, dated 27.07.2015 on the file of the learned Additional District and Sessions Judge, Krishnagiri at Hosur is set aside. The conviction and sentence passed in S.T.C.No.225 of 2013, dated 09.06.2014 is restored and the compensation awarded by the learned Magistrate under Section 357 of Cr.P.C. for the cheque amount,



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namely, Rs.36,35,730/- is also restored.

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Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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To

- 1.The Judicial Magistrate No.I, Ariyalur.
- 2.The Additional District Sessions Judge, Ariyalur.
- 3.The Inspector of Police (Crime Branch),
Ariyalur Police Station,
Ariyalur.
- 4.The Additional Public Prosecutor,
Madras High Court, Madras.



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RMT. TEEKAA RAMAN, J.

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Order made in
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