



Crl.A(MD)No.355 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.355 of 2013

M/s.Pothys Cotton Products(P) Ltd,
A Company incorporated under the
Companies Act having it's unit at
Sattur Road, Srivilliputtur-62,
Virudhunagar District.
Tamilnadu.
Represented through it's accounts clerk
R.Arumugaperumal,
S/o.P.K.S.Ramasamy

... Appellant/Complainant

vs.

1.M/s.Soham Fashions
A Partnership firm represented
through its partner,
Mr.Mohit Jain,
No.31, 5th Main Road,
Near Devi Theatre,
(Opposite to Prabhu Industries),
Sri Ramapuram,
Bangalore-560 021.

2.Mr.Mohit Jain,
PartnershipM/s.Soham Fashions,
No.31, 5th Main Road,
Near Devi Theatre,
(Opposite to Prabhu Industries),
Sri Ramapuram,
Bangalore-560 021.

... Respondents/Accused



PRAYER : This Criminal Appeal has been filed under Section 378 of Cr.P.C., to set aside the order passed in S.T.C.No.134 of 2011 by the Fast Track Court, Srivilliputtur, dated 18.06.2012 and convict the respondents.

For Appellant : Mr.A.Sivaji

For Respondents : Mr.Antony Arul Raj

JUDGMENT

This Criminal Appeal has been preferred as against the order of acquittal passed by the Fast Track Court, Srivilliputtur, in S.T.C.No.134 of 2011 dated 18.06.2012.

2.The appellant is the complainant. The respondents are the accused. A complaint was lodged by the complainant for the offence under Section 138 of Negotiable Instrument Act.

3.The crux of the complaint is that the complainant is the manufacturer of cotton products. The first accused is a firm and the second accused is a partner in the first accused partnership firm. The accused persons made a business transaction with the appellant by producing the cotton products namely, 'Yarn Dyed Materials' and 'Solid



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Dyed Materials' on credit basis. As per the said business transaction, the respondents are liable to pay a sum of Rs.27,93,808/- towards principal as on 02.07.2008. After repeated demand, the respondents issued a cheque for a sum of Rs.20 lakhs on 30.06.2008 and the same was presented for collection on 16.07.2008. However, it was returned with an endorsement 'Payment stopped by Drawer'. Immediately, after causing statutory notice, the appellant lodged a complaint before the Trial Court for the offences under Sections 138 and 142 of Negotiable Instrument Act.

4.On the side of the complainant, he had examined P.W.1 and P.W.2 and marked Exs.P.1 to P.19. On the side of the accused, he had examined himself as D.W.1 and Exs.D1 to D.W.7 were marked.

5.On perusal of both the oral and documentary evidence, the trial Court found the respondents not guilty and acquitted them from the charge under Sections 138 and 142 of Negotiable Instrument Act. Aggrieved by the same, present appeal has been filed.

6.The learned counsel for the appellant submitted that the said cheque was issued towards part liability. Though, the respondents had



taken the ground that the appellant supplied defective goods, the cheque was issued only for part liability and as such it cannot be a ground for issue stop payment letter. If there is a part liability, then the offence under Section 138 of Negotiable Instrument Act will attract and the respondents are liable to be punished. Without any reason, wantonly, the respondent issued stop payment letter after issuance of the cheque. He further submitted that when the respondents were having sufficient funds in their account, they had not willing to honour the cheque amount will lead to the irresistible conclusion that the accused had the intention not to honour the cheque and consequently, the offence under Section 138 of the Negotiable Instrument Act was made out. Without considering the above facts and circumstances, the Trial Court has acquitted the accused.

7.Per contra, the learned counsel for the respondents submitted that the goods supplied by the appellants were found defected one. Therefore, there was ex-change of notice. In fact, after receiving the statutory notice, the respondents issued reply notice stating that the cheque was not issued for any liability since the goods were supplied by the appellant are defected one. That apart, the cheque was issued only for security purpose at the time of business transaction. Further, he submitted that when the respondents issuing the stop payment notice, the account of the



respondents was maintained with sufficient money. In fact, P.W.2, the banker of the respondents was examined as P.W.1 and he categorically deposed that on the date of issuance of stop payment letter, there was sufficient funds available in the account of the respondents herein. Therefore, the offence under Section 138 itself would not attract and the Trial Court has rightly acquitted the respondents and the order passed by the Trial Court does not warrant any interference by this Court.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.The case of the appellant is that they supplied cotton products namely ' Yarn Dyed Materials' and 'Solid Dyed Materials' on credit basis to the respondents. On 02.07.2008, there was due from the respondents to the tune of Rs.27,93,808/- towards part liability. The respondent issued a cheque for a sum of Rs.20 lakhs on 30.06.2008. It was presented for collection only on 16.07.2008. However, it was returned with an endorsement 'payment stopped by the Drawer'. Hence, the appellant caused statutory notice. On receipt of the same, the respondents issued reply notice and it was marked as Ex.P.11.



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10.The cheque was issued on 30 days credit basis by the respondents at the time of the goods arrived. But, in the intervene period, there was a delay in discharging the materials and defected materials. That was caused a lot of loss to the respondents and the reputation of the respondents was also affected. Due to the conduct of the appellant, the defected materials were returned to the appellant firm and the same was brought to the notice to the appellant firm through various e-mails. The appellant concealed the fact that they had not counted the returned materials, which was worth about Rs.20 lakhs. But, in the light of the reasons, the respondents issued a letter to the bank to stop payment on 30.06.2008 which was marked as Ex.D.7.

11.On perusal of Ex.D.7 reveals that a request to the bank to stop payment of cheque issued in favour of the appellant was marked as Ex.D.5. There was also e-mail communication between them with regard to the defective goods supplied by the appellant and there was a delay in supplying of goods. In fact, the appellant had examined P.W.2, who is banker of the respondents. He categorically deposed that on the date of issuance of stop payment letter, the respondent's account was having balance of Rs.66,58,507.40 as on 18.07.2008. Therefore, the respondents



categorically rebutted the presumption arisen under Sections 138 and 142 of Negotiable Instrument Act. Therefore, the Trial Court has rightly acquitted the respondents and there is absolutely no ground to interfere with the order of acquittal.

12.The learned counsel for the respondents relied upon a judgment of the Hon'ble Supreme Court in the case of **Chandrappa and Others Vs. The State of Karnataka** reported in **2007 (4) SCC 415**, which reads as under:-

“(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court



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should not disturb the finding of acquittal recorded by the trial court.”

13.In view of the above, this Court is of the considered view that the Trial Court has rightly acquitted the respondents and this Court finds no infirmity or illegality in the order passed by the Trial Court. Accordingly, this Criminal Appeal is dismissed.

07.06.2023

dss

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1.The Fast Track Court,
Srivilliputtur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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