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Crl.A.No.680 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.680 of 2015 and
Crl.M.P.No.8400 of 2018

A.Senthil

... Appellant

Vs.

1.K.B.Viswanathan,
Regional Sale Manager,
M/s.Jayanthi Agro Foods (P) Ltd.,
No.12-A, 1st Street,
V.R.S.Nagar, Maduravoyal,
Chennai - 600 095.

2. The Inspector of Police,
Madhuravoyal Police Station,
Chennai.

... Respondents

Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code, against the Judgment and orders, dated 24.02.2015 made in C.A.No.46 of 2014 passed by the Principal District & Sessions Judge, Tiruvallur, reversing the Judgment and orders dated, 25.03.2014 passed in C.C.No.56/2012 by the Judicial Magistrate, Fast Track Court (Magisterial Level II, Poonamallee, Tiruvallur District.



Crl.A.No.680 of 2015

For Appellant : Mr.Amar.D.Pandiya
For Respondents : Mr.P.Nagaraju (for R1)
Mr.S.Raja Kumar, (for R2)
Additional Public Prosecutor

JUDGMENT

Challenging the order of acquittal, dated 24.02.2015 passed in C.A.No.46 of 2014 by the learned Principal Sessions Judge of Tiruvallur, the present appeal is filed by the appellant / complainant.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The case of the appellant / complainant in a nutshell is as follows :

3.1. The complainant is the Proprietor of M/s.Arunachalam Agency and the accused, Mr.K.B.Viswananthan is the Sales Manager of M/s.Jayanthi Agro Foods (P) Ltd.



Crl.A.No.680 of 2015

WEB COPY

3.2. The complainant and the accused had business transactions and during the course of the said transaction, the accused issued a cheque bearing number 012019 dated 28.01.2012 (Ex.P1) for a sum of Rs.3,38,000/- drawn on Central Bank of India, Porur Branch, Chennai, in favour of the complainant.

3.3. When the complainant presented the cheque for collection through his bankers, viz., Union Bank of India, Madhavaram Branch, Chennai, it was returned for the reason “Payment stopped by Drawer”, as is seen from the cheque return memo dated 01.02.2012 (Ex.P2).

3.4. Thereafter, the complainant issued a statutory notice dated 17.02.2012 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque within fifteen days from the date of receipt of the notice.

3.5. The accused received the statutory notice on 18.02.2012, as is evidenced by the postal acknowledgement card (Ex.P4) but did not come forward to make good the payment and did not also send any reply notice.



Crl.A.No.680 of 2015

WEB COPY

3.6. Therefore, the complainant filed a private complaint before the Judicial Magistrate, (Fast Track Court), Magisterial Level II, Poonamallee, under Section 200 Cr.P.C. against the respondent / accused for an offence punishable under Section 138 of Negotiable Instruments Act in C.C.No.56/2012.

3.7. The learned Judicial Magistrate took cognizance of the offence under Section 138 of Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.

3.8. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.

3.9. On the side of the complainant, the complainant examined himself and one another witness and marked Ex.P1 to Ex.P5.

3.10. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.



Crl.A.No.680 of 2015

WEB COPY

3.11. The learned trial court judge after analysing the oral and documentary evidence on record, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo Simple Imprisonment for a period of six months and to pay a compensation of Rs.3,38,000/- to the complainant, aggrieved over which, the accused preferred an appeal in C.A.No.46 of 2014 before the Principal Sessions Judge, Tiruvallur.

3.12. The learned Sessions Judge, after the analysing evidence on record, set aside the conviction and sentence passed by the trial Court and acquitted the accused vide his judgment and orders dated 24.02.2015, aggrieved over which, the present appeal is filed by the complainant.

4. Heard Mr.Amar D.Pandiya, learned counsel for the appellant / complainant and Mr.P.Nagaraju, learned counsel for the first Respondent / Accused and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the second Respondent.



Crl.A.No.680 of 2015

WEB COPY

5. It is seen from the records that the Cheque (Ex.P1) was issued in favour of M/s.Arunachalam Agency and the Proprietor of the said concern is one Dhanalakshmi who is the wife of Senthil, the complainant. The complainant did not adduce any documentary evidence to show that he was authorised by his wife to file a private complaint against the accused. In the private complaint, he has shown himself as Proprietor of M/s.Arunachalam Agency. This fact has been analysed by the first appellate Court Judge by observing thus:

"The appellant while describing him in the letter as K.B.Viswanathan, Regional Sales Manager, M/s.Jayanthi Agro Food Products (P) Ltd., He describes the complainant as Mr.Senthil, M/s Arunachalam Agency. Even in the body of the letter he says that he has taken back the company stock on promise that he will settle the money within a period of one month. But however he could not settle the money. Hence the subject cheque Ex.P1 is issued. The further perusal of this letter indicates that the cheque was not issued unconditionally but on condition that he will clear the debt on appointing some other super stockist and take advance from them and pay the liability. The complainant is neither the payee nor the holder in due



WEB COPY



CrI.A.No.680 of 2015

course. He has attempted to file a power of attorney issued by his wife in his favour during the course of trial but the trial court has rightly declined to entertain that. However this will not help to cure the defect since the complaint is ab initio void since it has been filed by the person who is neither the payee nor his/her authorised agent at the time of taking cognizance. The reading of the trial court Judgment on the rival contentions made by the respective parties, this court finds that the trial court has failed to distinguish a company and a proprietary firm. A company is a juristic body having independent existence of his own which can be sued and sue. Whereas a proprietary firm is not a juristic entity, having independent legal existence. It has to be represented by the proprietors. Having failed to distinguish the juristic characters, the trial court has wrongly relied upon the Judgment in MMTC Ltd. VS MEDCHIL Chemicals and Pharma (P) Ltd., reported in 2002(1) SCC 234 instead of Shankar Finance and Investments Vs. State of Andhra Pradesh & Ors. reported in (2008) 8 SCC 536 which specifically deals about proprietary firms. In the result, the appeal ought to allowed on this short ground. In the light of above discussions, this Court holds that the Judgment and conviction imposed by the trial court against the



WEB COPY



Crl.A.No.680 of 2015

appellant/accused needs interference and is liable to be set aside and the point is answered in favour of the appellant/accused."

The above observations of the first appellate Court Judge, cannot be found fault with.

6. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The Judgment and orders dated 24.02.2015 in C.A.No.46/2014 passed by the Principal Sessions Judge, Tiruvallur is confirmed.
- iii. Consequently, connected miscellaneous petition is closed.

15.07.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum



Crl.A.No.680 of 2015

WEB COPY

To

1. The Principal District & Sessions Judge,
Tiruvallur.
2. The Judicial Magistrate,
Fast Track Court (Magisterial Level II),
Poonamallee, Tiruvallur District.
3. The Inspector of Police,
Madhuravoyal Police Station,
Chennai.
4. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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R.HEMALATHA, J.

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