



Crl.A.No.66 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

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

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M/s.Sri Saravana Enterprises,
Rep. by one of its Partners,
and General Power of Attorney,
R.Krishnamurthy,
New No.59, Old No.29,
Guruvappa Chetty Street,
Chintadripet, Chennai 600 002.

... Appellant/Complainant

Vs.

1. M/s.Success Fire Service Pvt. Ltd.,
Rep. by its Chief Executive,
K.AL.Swaminathan.

2. K.AL.Swaminathan,
Chief Executive,
M/s.Success Fire Service Pvt. Ltd.,

3. Mrs.S.Unnamalai,
Director,
M/s.Success Fire Service Pvt. Ltd.,

...Respondents/Accused



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Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code, against the Judgment and orders, dated 31.07.2012 passed in C.C.No.13810/2008 by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore.

For Appellant : No appearance

For Respondents : No appearance

JUDGMENT

Challenging the order of acquittal, dated 31.07.2012 passed in C.C.No.13810/2008 by the learned Metropolitan Magistrate, Fast track Court II, Egmore, Chennai, the present Criminal Appeal is filed by the complainant.

2. Though the present appeal is filed in the year 2014, till date notice has not been served on the respondent. The counsel for the appellant, is also not present.



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3. 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.

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

- i. The complainant supplied goods to the first accused company represented by the second accused and during the course of transaction, there was an outstanding amount of Rs.7,41,408/- due and liable to be paid by the accused.
- ii. After much persuasion, the second accused on behalf of the first accused company issued a cheque bearing number 651406, dated 02.07.2007 (Ex.P4) for a sum of Rs.5,00,000/- drawn on ICICI Bank, Santhome Branch, Chennai in favour of the complainant.
- iii. When the cheque was presented for collection through his bankers viz., Vijaya Bank, Abirampuram Branch, Chennai, by the complainant, it was returned for the reason 'insufficient funds' as is evidenced by the Cheque Return Memo, dated 03.12.2007 (Ex.P6).



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- iv. Thereafter, the complainant issued a statutory notice, dated 28.12.2007 (Ex.P8) to the accused calling upon him to pay the amount due under the cheque (Ex.P4) within fifteen days from the date of receipt of notice.
- v. The accused received the notice on 31.12.2007 as is evidenced by the postal acknowledgement Cards (Ex.P9 to Ex.P12), but did not come forward to make good the payment and did not also send any reply notice.
- vi. Therefore, the complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court-II at Egmore under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.13810/2008.
- vii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of N.I. Act and issued summons to the accused under Section 204 Cr.P.C.
- viii. On the appearance of the accused, the copies of records were furnished to them under Section 207 Cr.P.C. The substance of



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accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.

ix. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P12.

x. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. No witness was examined on the side of the accused.

xi. The learned trial court judge after analysing the oral and documentary evidence on record found the accused not guilty of the offence under Section 138 of Negotiable Instruments Act and acquitted them under Section 255(1) Cr.P.C., vide her judgment and orders dated 31.07.2012, aggrieved over which, the present appeal is filed by the complainant.

5. A perusal of a letter of undertaking, dated 02.11.2007 (Ex.P5) shows that the accused has not mentioned that he is due and liable to pay a sum of Rs.7,41,408/-. Even in the statutory notice, dated



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28.12.2007 (Ex.P8), the complainant has not mentioned this amount.

More over, the complainant failed to indicate the letter of undertaking (Ex.P5) in his private complaint and the contention of the accused that he paid a sum of Rs.5,00,000/- to the complainant by way of demand draft was also admitted by him during the course of cross examination. In the circumstances, the complainant had not proved any legally enforceable debt as on the date of the private complaint. The trial Court had analysed all these aspects and by a well considered order, acquitted the accused and there is no reason for this Court to interfere with the same.

7. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgment and orders dated 31.07.2012 in C.C.No.13810/2008 passed by the Metropolitan Magistrate, Fast Track Court-II, Egmore is confirmed.

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Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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- To
1. The Metropolitan Magistrate,
Fast Track Court No.II, Egmore.
 2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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R.HEMALATHA, J.

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