

(2011) 03 MAD CK 0219
In the Madras High Court
Case No : Criminal Appeal No. 365 of 2003

Sakthi Finance Limited

APPELLANT

Vs

K. Selvaraj

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Evidence Act, 1872 — Section 114

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 7 RCR(Criminal) 158

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : E. Om Prakash, for the Appellant; O.V. Krishnan, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The Appellant filed C.C. No. 165/1996 on the file of the learned Judicial Magistrate No. I, Namakkal against the

Respondent herein alleging that the Respondent had committed offence punishable u/s 138 of the Negotiable Instruments Act. The learned

Magistrate by judgment dated 7.8.2000 found the Respondent guilty u/s 138 of the N.I. Act and accordingly, imposed a sentence of rigorous

imprisonment for one year. Challenging the same, the Respondent preferred an appeal in C.A. No. 59/2002 before the Additional District Judge,

Fast Track Court, Namakkal. The said appeal came to be disposed of by judgment dated 18.11.2002. The lower appellate court set aside the

conviction and sentence imposed by the trial court and acquitted the Respondent. Aggrieved over the same, the Appellant is before this Court with

this appeal against acquittal.

2. The facts of the case in brief would be as follows:

The Appellant is a Public Limited Company, incorporated under the Companies Act and the same is carrying on the business in hire purchase and

leasing. It has got its registered office at No. 475, Dr. Nanjappa Road, Coimbatore. The said company has a branch office at Namakkal. The

Respondent entered into a hire purchase agreement with the Appellant company on 26.3.1995 for the purchase of three Ashok Leyland LPG

Tankers. His wife Mrs. Lakshmi Selvaraj stood as a guarantor. As per the agreement, the Respondent agreed to repay the loan amount of

R.10,26,698/-together with interest in 42 monthly instalments. But he committed default. When the same was demanded, the Respondent issued

three cheques for a total sum of Rs. 29,95,538/-. The first cheque was for a sum of Rs. 16,30,538/-, the second cheque was for Rs. 3,65,000/

and the third cheque was for Rs. 10,00,000/-. Thus the total amount due under all the three cheques was Rs. 29,95,538/-and the three cheques

were presented for collection. But they were dishonoured since there was no sufficient fund in the account of the Respondent to honour the

cheques. Therefore, the Appellant company issued a statutory notice as required u/s 138 of the N.I. Act on 18.5.1996. The said notice was

received by the Respondent on 20.5.1996. But he did not comply with the notice. Therefore, a private complaint was lodged by the Appellant

before the Judicial Magistrate No. I, Namakkal.

3. Before the trial court on the side of the complainant, as many as 4 witnesses were examined and 8 documents were exhibited. P.W.1 was the

Branch Manager of the Namakkal Branch who has spoken to about the hire purchase agreement between the Respondent and the Appellant

company and also the issuance of three cheques in question by the Respondent and all the other subsequent facts including the issuance of statutory

notice. P.W.2 was the then Law Assistant working at the Head Office of the Appellant company who has spoken to about the statutory notice

issued to the Respondent by the head office. P.Ws. 3 and 4 are the officials of the bank who have spoken to about the dishonour of the cheques.

So far as the documents are concerned, Ex.P.1 is the Power of Attorney executed by the company in favour of P.W.1 to lay a private complaint.

Ex.P.2 are the cheques in question. Ex.P.3 is the memo from the bank indicating

the dishonour of the cheque. Ex.P.4 is the copy of the notice dated 18.5.1996 and Ex.P.5 is the letter given by the postal authorities evidencing the service of notice on the Respondent. Ex.P.6 is the account book maintained. Ex.P.7 and Ex.P.8 are also similar records pertaining to the hire purchase agreement.

4. The Respondent contended before the lower court that P.W.1 had no authority to lay a private complaint on behalf of the Appellant because

there was no authorisation given by the company nor was there any resolution passed by the company authorising P.W.1 to lay the complaint. He

would further submit that the cheques were not given in discharge of any enforceable legal liability. Per contra, it was contended that only blank

cheques were obtained from the Respondent by the Appellant when the hire purchase agreement was executed. The cheques were given only as a

security to ensure prompt payment and they were never intended to be used for realising any amount by the Respondent. Therefore, according to

the learned Counsel for the Respondent, there is no truth in the allegation that the cheques were given in discharge of any existing liability. It was

also contended that the statutory notice said to have been issued by the Appellant company was addressed to a wrong address and the same was

never received by him. Thus, according to him, the statutory notice was not at all served on him. Therefore, the Appellant company has not

complied with the mandatory requirements u/s 138 of the N.I. Act, it was contended by the learned Counsel for the Respondent.

5. Having considered the rival contentions, the trial court rejected the defence taken by the accused and found him guilty u/s 138 of the N.I. Act.

But the lower Appellate Court has accepted all the above three contentions and on these three grounds, the lower Appellate Court reversed the

findings of the trial court and acquitted him. Aggrieved over the same, the Appellant company is now before this Court with this appeal.

6. I have considered the submissions made on either side and also perused the records.

7. The learned Counsel for the Appellant would submit that all the three grounds on which the lower Appellate Court acquitted the Respondent are

not tenable and they are not legally sound. In so far as the authorisation in favour of P.W.1 to lay the private complaint is concerned, the learned

Counsel for the Appellant would submit that under Ex.P.1, an appropriate authorisation was given by the company. Therefore, the first ground

raised by the Respondent should fail. But the learned Counsel for the Respondent would submit that the same has been signed by one person

known, claiming himself to be the authorised signatory of the Appellant company. The learned Counsel for the Respondent would further point out

that there was no resolution produced before the court so as to know whether the signatory of the said document was, in turn, authorised by the

Appellant P.W.1 to lay the private complaint.

8. I have considered the above submissions very carefully.

9. A perusal of Ex.P.1 would go to show that the same has been signed by a person claiming himself to be the authorised signatory of the

Appellant company. As rightly held by the lower Appellate Court, it has not been explained as to who the authorised signatory was and what for

was the authorisation and by whom. As pointed out by the learned Counsel for the Respondent now, no resolution of the board nor any other

document has been produced in evidence to show that the person who has signed the said document as authorised signatory really had

authorisation to execute the said document. This creates doubt. Even before this Court, the learned Counsel for the Appellant is not in a position to

explain this. Therefore, as far as the 1st ground upon which acquittal has been made by the lower Appellate Court deserves to be confirmed.

10. Now coming to the second ground, namely, the cheques in question were not given in discharge of any legally enforceable liability, we have to

look into the cross examination of P.W.1 done by the accused. In the cross-examination, he has stated that these three cheques were given only as

blank cheques and except the signatures of the Respondent, all the other writings in the cheques were made only by P.W.1. Apart from this, he has

further gone to the extent of saying that he has got yet another blank cheque given by the Respondent in his custody. If we look into the chief

examination of P.W.1 it would reveal that it is the case that all the three cheques were filled up duly and thereafter, they were brought by the

accused and given to the company. This material contradiction between the chief examination and the cross examination has not been explained to

this Court. This only probablises the defence taken by the accused.

11. According to the accused, as I have already stated, the cheques were never intended to be used for realising any amount. But they were given

only as blank cheques as security. From the answers given by P.W.1 during the cross-examination as extracted above, I am of the view that the

defence has established the correctness of the stand taken, by means of preponderance of probabilities.

12. Now coming to the third and vital point, according to the Respondent, the statutory notice u/s 138 of N.I. Act was not served at all upon him.

In order to prove that such statutory notice was really issued, the Appellant has examined P.W.2. P.W.2 was the then Law Assistant in the head

office of the Appellant company from where the notice is said to have been given. He would state that the notice was given to the Respondent to

his address at No. 4, Periannan Street, Namakkal. But P.W.1 and P.W.2 would admit that the address given in all the documents such as hire

purchase agreement is No. 76, Lion Street, Namakkal. It is not explained to the court as to why the notice was not sent to this address instead it

was sent to a different address. But the learned Counsel for the Appellant would submit that the address at No. 4, Periannan Street, Namakkal is

the address where the Respondent was running his business. But this explanation is only an after thought because there is no such explanation

offered by P.W.1 or P.W.2. There has been no record produced before the court by way of evidence to show that the Respondent was having his

business place at No. 4, Periannan Street, Namakkal. The lower Appellate Court has therefore found that the notice said to have been issued by

the Appellant was sent to a wrong address. In this conclusion, I do not find that there is any infirmity.

13. Above all, it is the admitted case that the postal acknowledgement card was not produced before the court as evidence. Though it is stated

that the Respondent received the notice at the address given at No. 4, Periannan Street, Namakkal, it is not known as to why the said

acknowledgement card was not produced before the court. That apart, the postal receipt for sending the notice by registered post also has not

been produced. Instead, a letter from the postal authorities certifying that the said notice was served on the Respondent alone has been produced.

Quite naturally, the said certificate does not contain the signature of the Respondent. It is needless to point out that when a registered Thapal is

served on the addressee, apart from getting his signature in the acknowledgement card, his signature would be received by the postman in the register maintained by the Postal Department. May be the case of the Appellant is that the original acknowledgement card was not received back

by the Appellant. If that is so, nothing would have prevented the Appellant to summon the said register which would have contained the signature

of the accused if the accused had acknowledged the said notice. It is also not explained as to why the postman has not been examined to speak

about the facts that the notice was really served on the Respondent.

14. As per Section 114(g) of the Evidence Act, there has to be presumption raised against the Appellant that by failing to produce the best

evidence available, namely, the original register maintained by the postal authorities and the postman before the court, the Appellant has to suffer

from adverse inference drawn under the said provision. Of course, such adverse presumption is rebuttable, but the same has not been rebutted by

the Respondent. On this ground also, the judgment of the lower Appellate Court deserves to be confirmed.

15. In any view of the forgoing discussions, I do not find any infirmity at all in the findings of the lower Appellate Court warranting interference at

the hands of this Court.

16. In the result, the Criminal Appeal fails and the same is accordingly dismissed.