
(2012) 07 MAD CK 0062
In the Madras High Court
Case No : Criminal A. No. 64 of 2006

Seasons Exports, Chennai

APPELLANT

Vs

Samhit Exports Chennai and Others

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 2 BC 559 : (2013) 1 RCR(Criminal) 10

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : M. Aravind Subramanian, for the Appellant; P.J. George, for the Respondent

Final Decision : Dismissed

Judgement

R. Mala, J.—The appeal arises out of the Judgment of acquittal made in C.C. No. 8205 of 2000 on the file of the XVIII Metropolitan Magistrate, Saidapet. Chennai. The appellant as a complainant preferred a private complaint u/s 138 of the Negotiable Instruments Act stating that it is carrying on business of supplying fabrics and it supplied fabric to the value of Rs. 4,29,658/- as per the instruction of the third accused/third respondent under Ex. P2-Invoice. The third respondent transferred the goods to the first accused/first respondent without the knowledge of the complainant. The third accused asked the complainant to change the invoice in the name of the first accused. A sum of Rs. 91,800/- alone was paid by the second accused/second respondent. The complainant received a fax on 13.07.2000 from the first accused stating that they were rejecting the goods and later, they informed the complainant that there had been a mistake and that they would make payment. In order to pay the cost of fabric, the first accused issued two cheques bearing Nos. 732031 and 732032 dated 11.07.2000 and 31.07.2000 drawn at State Bank of India, Guindy Branch, Chennai, for a sum of Rs. 60,000/- and Rs. 2,77,858/-. The complainant presented the cheques for encashment before Indian Overseas Bank, Central Office, Chennai and the same

was returned with an endorsement "insufficient funds" on 13.07.2000 and 08.08.2000. Thereafter, the first accused issued two fresh cheques bearing Nos. 775631, 775632 for a sum of Rs. 70,000/- each. The cheque bearing No. 775631 was honoured while the cheque bearing No. 775632 was dishonoured. At the request of the first accused, the complainant presented the cheque bearing No. 775632 for Rs. 70,000/- and another cheque bearing No. 732032 for Rs. 2,77,858/- for encashment, but, the cheque bearing No. 775632 was honoured while the cheque bearing No. 732032 was dishonoured and returned with an endorsement "Exceeds arrangement" on 03.10.2000 under Ex. P5-Return Memo. The Debt advice was marked as Ex. P6. Therefore, the complainant issued Ex. P7-statutory notice to the first accused on 17.10.2000 and the same was received by them on 16.11.2000 and the acknowledgment card was marked as Ex. P8. The accused issued the cheque, knowing fully well that there was no sufficient funds in its accounts to honour the cheque, thereby, committed offence u/s 138 of the Negotiable Instruments Act.

2. The learned Metropolitan Magistrate, after following the procedure, examined P.W. 1 and marked Exs. P1 to P8 and placed the incriminating evidence against the accused. But, the accused pleaded not guilty. On the side of the accused, D.W. 1 was examined and Exs. D1 to D5 were marked. After considering the oral and documentary evidence, the learned Magistrate held that the disputed cheque was dishonoured due to stop payment and not for Exceeds arrangement and the complainant failed to prove that the disputed cheque was issued for discharging legally enforceable debt. Aggrieved against the same, the present appeal has been preferred by the appellant.

3. The learned counsel for the appellant submitted that the complainant supplied fabrics to the value of Rs. 4,29,658/- as per the instruction of the third accused. As per Ex. P3-letter given by the 3rd respondent, viz., Nizam International Ltd., the first accused had to pay the balance amount of Rs. 3,37,858/-. Even though notice had been received by the accused, there was no reply. As per Ex. P5-return memo with an endorsement "Exceeds arrangements" and Ex. P6-the debt advice, the ingredients of offence u/s 138 has been made out. He further submitted that the disputed cheque is Ex. P4 and the same was issued by the accused for discharging the legally enforceable liability. But the said factum has not been considered by the trial Court. Hence, he prayed for setting aside of the Judgment of acquittal and prayed for conviction.

4. Resisting the same, the learned counsel for the respondents submitted that the complaint itself is a defective one and the same is not maintainable, because, the cheque had been issued in the name of M/s. Seasons Exports Pvt. Ltd. and the complaint had been filed by one M/s. Seasons Exports. Therefore, both the companies are different entities. He also culled out the evidence of P.W. 1, wherein, P.W. 1 himself admitted that M/s. Seasons Exports and M/s. Seasons Exports Pvt. Ltd. are different entities. He further argued that the appellant is not a competent person to file a private complaint u/s 138 of the Negotiable

Instruments Act and P.W. 1, in his evidence, himself admitted that the due amount is Rs. 1,97,858/- but, the first respondent issued the cheque for Rs. 2,77,858/-. So, the accused issued a letter for stop payment and the same has been proved by examining D.W. 1. The trial Court, on considering all the aspects in a proper perspective, came to the correct conclusion. Hence, he prayed for dismissal of this appeal.

5. Considered the rival submissions made on either side and perused the records.

6. The appellant had supplied fabric to the third accused/third respondent, who in turn endorsed the same to A1 and A2. To pay the amount of invoice after deducting the sum of Rs. 91,800/-, the first and second respondents issued two cheques for Rs. 60,000/- and Rs. 2,77,858/-. When the cheque for Rs. 2,77,858/- was presented for encashment, the same had been returned as "Exceeds arrangements". Hence, statutory notice had been issued and complaint had been preferred.

7. Now, this Court has to decide whether the complaint itself is maintainable?. Perusal of Ex. P1-Resolution passed by M/s. Seasons Exports Private Limited would reveal that the appellant herein is authorized to sign and execute all necessary papers and to authorize any representative to produce evidences etc. Ex. P2 is the invoice of M/s. Seasons Exports Pvt. Ltd. Ex. P4-Cheque dated 31.07.2000 for Rs. 2,77,858/- was issued in favour of M/s. Seasons Exports Pvt. Ltd. and the same was signed by the second accused on behalf of the first accused.

8. P.W. 1, in his cross examination, deposed that he has appeared on behalf of M/s. Seasons Exports, but, not for M/s. Seasons Exports Private Ltd. He fairly conceded that he did not know about the transaction between the accused and the complainant/appellant's firm. In such circumstances, I am of the view that M/s. Seasons Exports is different from M/s. Seasons Exports Private Ltd. Admittedly, the cheque was issued in favour of M/s. Seasons Exports Private Ltd. but, in the complaint, the complainant's name is different, i.e. M/s. Seasons Exports. So, the complaint is not maintainable. Therefore, the argument advanced by the respondent's counsel is acceptable.

9. Now, this Court has to decide whether Ex. P4-cheque was issued for discharging the legally enforceable debt?. As per Ex. P2-Invoice, the goods to the value of Rs. 4,29,658/- was supplied by Seasons Exports Private Ltd. In Ex. P3-letter given by the 3rd respondent, it was specifically stated that Rs. 3,77,858/- is to be paid by the first and second respondents. In pursuant to that, Ex. P4-cheque was issued by the first respondent for Rs. 2,77,858/-.

10. The case of the appellant is that after returning the cheque, the first respondent issued two cheques for Rs. 70,000/- each. The said cheques were honoured and, thereby, the appellant had received Rs. 1,40,000/-. Therefore, the balance amount to be paid by the first accused is Rs. 1,91,858/-.

11. The Apex Court, in the case of V.G. Saraf and Sons Vs. H. Ranjith and Another, which is relied upon by the learned counsel for the appellant, held that discrepancy in the invoice and the dishonoured cheque is not a ground for acquittal. Therefore, it is appropriate to incorporate para 3 of the Judgment.

3. The primary stand of the appellants in this appeal is that the High Court erred in acquitting the accused on the ground that Ex. P6, bill represents only for Rs. 1,61,000/- and that Ex. P1, Cheque was for a sum of Rs. 1,86,606.95. It is pointed out that the evidence of P.W. 1, the complainant was to the effect that the accused was liable to pay a sum of Rs. 1,81,256.75 and the cash discount and the sales Tax. It is the case of the appellants that the High Court misread the evidence of P.W. 1 to set aside the concurrent findings recorded by the Courts below. Learned counsel for Respondent 1 on the other hand supported the judgment of the High Court. 12. The learned counsel for the respondent submitted that a sum of Rs. 1,40,000/- had been paid in full and final settlement by way of two cheques and the same was encashed by the appellant. It is true that the appellant had admitted the receipt of encashing the amount of Rs. 1,40,000/- as per two cheques bearing Nos. 775631 and 775632. It is also true that Ex. P4-Cheque had been issued for Rs. 2,77,858/-, but, the balance amount to be paid by the accused is Rs. 1,91,858/-. Considering the same, Ex. P4-cheque was not issued for discharging the existing liability.

12. It is also pertinent to note the evidence of D.W. 1. D.W. 1, who is the Deputy Manager of State Bank of India, in his evidence, deposed that before presenting the disputed cheque for encashment, he received Ex. D2-letter from the first respondent on 15.07.2000 for stop payment. Therefore, he sent Ex. D3-Letter to the appellant stating that the reason was inadvertently mentioned as "Exceeds Arrangement" instead of "Stopped Payment".

13. P.W. 1, in his cross examination, denied a suggestion that since the accused is not liable to pay the cheque amount, they sent a letter for stop payment. But, admittedly, the letter for stop payment had been sent by the accused on 15.07.2000 much prior to the presentation of cheque, i.e. on 29.09.2000. Admittedly, the cheque was presented by the appellant for encashment on 29th September 2000. On perusal of Exs. D4 and D5-Statement of accounts, it reveals that as on 30.08.2000, the account balance is Rs. 3,58,443/- and as on 29.09.2000, the account balance is Rs. 4,66,703/-. So, there is sufficient funds in the Bank account of the accused to honour Ex. P4-Cheque and the same was dishonoured because of Ex. D2-letter was given by the accused. Since Ex. D2-letter for stop payment was given by the respondent, the cheque was dishonoured.

14. Therefore, I am of the view that the appellant has not proved the ingredients of offence u/s 138 of the Negotiable Instruments Act against the accused. Furthermore, the appellant has miserably failed to prove that he has locus standi to file a complaint since the cheque and invoice stand in the name of Seasons Exports Private Ltd., but, whereas the complaint has been filed only by M/s.

Seasons Exports. So, the complaint itself is not maintainable. Moreover, the ingredients of Section 138 of the Negotiable Instruments Act has not been made out. The appellant is not entitled to any relief and the Judgment of acquittal passed by the trial Court does not suffer any irregularity or illegality. Hence, the appeal deserves to be dismissed and the same is hereby dismissed. In fine,

(a) the appeal is dismissed

(b) the Judgment of acquittal passed by XVIII Metropolitan Magistrate. Saidapet, Chennai, is hereby confirmed.