



Crl.A.(MD).No.308 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2023
Pronounced on: 23.11.2023
CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

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Premalatha .. Appellant

VS

1.M.S.Paramasivan and Sons,
Through its Managing Partner,
R.Paramasivan

2.R.Paramasivan

3.R.P.Radhakrishnan

4.R.P.Muthukrishnan .. Respondents

This Criminal Appeal filed under Section 378 (2) (b) of Criminal Procedure Code, to set aside the judgment passed by Additional District and Sessions Judge, Virudhunagar in Crl.A.No.1 of 2014 dated 31.08.2015 and confirm the judgment and conviction imposed by the Judicial Magistrate No.I, Virudhunagar in STC No. 900/2010 dated 12.12.2013.



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For Appellant : Mr.G.Mariappan

For Respondents
(R1 & R3) : Mr.R.Rajamohan

(R2 & R4) : Died

JUDGMENT

This Criminal Appeal has been preferred as against the judgment passed in Criminal Appeal.No.1 of 2014 dated 31.08.2015 on the file of the Additional District and Sessions Judge, Virudhunagar, wherein the Appellate Court has reversed the judgment and conviction of the trial Court passed in S.T.C.No.900 of 2010 dated 12.12.2013 on the file of the Judicial Magistrate No.1, Virudhunagar.

2. The trial Court has convicted the Accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced the Accused A2 to A4 to undergo Rigorous Imprisonment and to pay a compensation of Rs. 3,00,000/- (Rupees Three Lakhs only) within one month from the date of judgment, in default, to undergo 3 months Simple Imprisonment.



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3. The case of the complainant before the trial Court is that the Accused (A2 to A4) are well acquaintance with the complainant and the second Accused(A2) is managing the business of the Firm and the other Accused (A3 & A4) are sharers of the first Accused-Firm. The third Accused(A3), on behalf of the first Accused(A1), in the month of March 2008, borrowed a sum of Rs.3,00,000/- from the complainant and executed an acknowledgment for the said amount and also had agreed to repay the same within a period of six months. After six months, in spite of repeated demands and requests made by the complainant, the Accused did not repay the said amount. On 01.05.2010, a cheque bearing No. 243025 drawn on Indian Bank, Pudur Branch, Madurai, for a sum of Rs. 3,00,000/- was issued to the complainant by the accused. In that cheque, on behalf of the first Accused (A1), second Accused (A2) signed. On 13.05.2010, the cheque was presented for collection and the said cheque was returned on 14.06.2010 as “insufficient funds” through written memo dated 16.06.2010.

(i) Thereafter, on 21.06.2010, the complainant issued notice to the Accused (A1 to A4) and the same was received and replied by the



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Accused. After notice was issued by the complainant, the Accused(A1 to A4) did not repay the amount. Hence, the complainant filed complaint before the Judicial Magistrate No.1, Virudhunagar under Section 138 read with Section 141 of the Negotiable Instruments Act. After taking cognizance by the learned Magistrate, the Accused have appeared before the trial Court and then copies of records relied on by the complainant were furnished to the accused under Section 207 of Cr.P.C. and thereafter the substance of charge was explained to the Accused and they denied charges. Thereafter, the complainant has examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P15. On the side of the Accused, D.W.1 to D.W.4 were examined and Ex.D1 to Ex.D11 were marked and further Ex.X1 and Ex.X2 were also marked through witnesses. After completion of complainant's side evidence, the Accused were examined under Section 313 (i)(b) of Cr.P.C, with regard to the incriminating evidence available as against the accused but they denied the same as false.

(ii) After evaluating the oral and documentary evidences adduced on either side, the trial Court convicted the Accused (A1 to A4) by holding that the complainant has proved her case and Accused have not denied the signatures found in the cheque and the Accused failed to enter



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into witness box and thereby found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced the Accused to undergo six months Rigorous Imprisonment for each Accused and to pay a compensation of Rs.3,00,000/- within one month from the date of the order, in default, to undergo three months Simple Imprisonment.

4. As against the judgment and conviction, the Accused (A1 to A4) have preferred appeal before the Principal District and Sessions Judge, Virudhunagar and the Principal District and Sessions Judge has made over the case to the Additional District and Sessions Judge, Virudhunagar in Criminal Appeal No.01 of 2014. The Appellate Court after hearing both sides, reversed the judgment of the trial Court by holding that the complainant has failed to prove the issuance of cheque, financial capacity, lack of pleadings in the complaint and allowed the appeal by acquitting the Accused from the charge under Section 138 of the Negotiable Instruments Act.

5. As against the judgment passed by the Appellate Court in



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Criminal Appeal.No.1 of 2014, the complainant has preferred the present appeal on the following grounds:

- “a. The judgment passed in C.A.No. 1 of 2014 by Learned Additional District and Sessions Judge, is erroneous and liable to be set aside and the judgment of the trial court is well founded and has to be sustained.*
- b. The appellate court ought not to have reversed the findings of the trial court which is well founded on legal principles.*
- c. The complainant had well established her case by both oral and documentary evidence.*
- d. The trial court had rightly concluded as if the complainant had discharged the initial burden of the borrowal by accused by Ex.P1. It is submitted that the accused had denied the signature in Ex.P1. The trial court had availed Section 73 of Evidence Act for comparing the signature and come to the conclusion that ExP1 (undertaking letter) was executed by accused. The 1st Appellate Court discarded the above findings by coming to the conclusion that the court should not resort to comparison of signature in hot fight cases. The above*



view of the 1st Appellate Court is erroneous and not supported by judgments. It is submitted that when the trial court had come to the above conclusion that the accused should have taken recourse by filing applications to send the disputed document for expert opinion. When the accused had not done the above process the finding of the trial court should not be disturbed.

e. The trial court had well founded as the accused had not discharged the subsequent burden when the signature is admitted. It is submitted that the 1st Appellate Court had failed to appreciate that the accused had not discharged the burden of proving that the consideration did not pass on from the complainant.

f. The complainant had stated as if the borrowal was made on March 2008 both in the notice and in the complaint. The 1st Appellate Court had disbelieve by saying that the exact date and place were not mentioned in the notice and in the complaint. It is submitted that admitted fact is that both complainant and accused are known to each other and the transaction was made while good relationship was between the parties.



g. The trial court had rightly concluded that the complainant had means to lent such amount of Rs. 3 lakhs to the accused. It is established that the complainant was in possession of jewels and houses. The 1st Appellate Court wrongly hold that the date of pledging the jewels before borrowal was not proved.

h. It is not correct on the part of the 1st Appellate Court to hold that the cheque was issued towards the principal amount only. There is no bar for receiving the cheque towards the principal amount only.

6. The learned counsel appearing for the appellant would contend that the third Accused(A3), on behalf of first Accused Firm(A1), borrowed a sum of Rs.3,00,000/- from the complainant and on the same day, executed an acknowledgment. Thereafter, in order to settle the above said amount, the Accused issued a cheque dated 01.05.2010 for a sum of Rs.3,00,000/-, drawn on Indian Bank, Pudur Branch, Madurai. When the cheque was presented for collection, it was returned as “insufficient funds” with written memo and thereafter, the complainant



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issued notice to the Accused and the Accused received and replied to the notice. Thereafter, failed to repay the amount, thereby the complainant filed complaint as against the Accused. In order to prove the case of complainant on the side of the complainant, P.W.1 and P.W.2 were examined and marked Ex.P1 to Ex.P15 and on the side of the accused, D.W.1 to D.W.4 were examined and Ex.D1 to Ex.D11 were marked and further Ex.X1 and Ex.X2 were also marked. The trial Court after elaborate discussion, correctly convicted the Accused and sentenced them to undergo six months Rigorous Imprisonment and ordered to pay a compensation of Rs.3,00,000/-, in default of payment, to undergo a further Simple Imprisonment of three months.

6.1.In the appeal, the Appellate Court, without considering the evidences adduced on the side of the complainant, had erroneously reversed the judgment of the trial Court and acquitted the Accused by holding that the complainant has not proved the case. In fact, the complainant categorically deposed about the relationship of the parties and loan borrowed by the third Accused (A3) on behalf of the first Accused (A1) and issuance of cheque. The Appellate Court failed to



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consider the evidence of P.W.1 that she is capable to lend money to the Accused. Moreover, the Accused did not take steps to compare the signature found in the cheque through expert and the presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant. In order to rebut the above said presumption under Section 139 of the Negotiable Instruments Act, the Accused have failed to establish the case through sufficient evidence. Though the Accused examined D.W.1 to D.W.4, they failed to enter into witness box to depose about the facts of the case. Mere examination of other witnesses without entering into the witness box by the Accused is not sufficient to rebut the presumption under Section 139 of the Negotiable Instruments Act. Therefore, the Appellate Court has erroneously acquitted the Accused and the judgment passed by the Appellate Court is liable to be set aside by allowing this appeal.

7. The learned counsel appearing for the respondents would contend that the defacto complainant is none other than the wife of erstwhile servant of the company of the Accused. The complainant's husband was working under the Accused company and his main duty was



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to handle the accounts of the company and whereby the Accused used to give signed cheques to him to settle the accounts. Thereafter, the husband of the complainant resigned the job from the company and he misused the signed cheques given for the purpose of settling the accounts. Further, the trial Court has failed to consider that the complainant has not proved any source of income and merely compared the signatures under Section 73 of the Evidence Act without referring the documents for comparison through expert. Further on behalf of the Accused, D.W.1 to D.W.4 were examined and marked Ex.D1 to Ex.D11. The Accused had sufficient funds in his Bank account and his turnover is around Rupees One Crore to the contemporary period of the alleged issuance of cheque and thereby he has no necessity to borrow such amount from the complainant. Moreover the complainant has failed to aver that either in the complaint or in the notice, there is no reference about the date and place with regard to the borrowal of amount and the execution of the concerned cheque. Therefore, the trial Court without considering the evidence on either side, erroneously convicted the Accused and the Appellate Court after elaborate discussion and assigning the reasons, set aside the judgment and conviction passed by the trial



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Court and acquitted the Accused. Therefore, the present appeal is liable to be dismissed.

8. This Court heard both sides and perused the records. Upon hearing both sides and perusing the records, judgments of Courts below and grounds, the point for determination in this appeal is whether the complainant has proved the case against the Accused for the offence under Section 138 of the Negotiable Instruments Act.

9. This is a case filed by the wife of erstwhile employee of the Accused company, alleging that the Accused borrowed a sum of Rs. 3,00,000/- from the complainant in the month of March 2008 and then issued a cheque dated 01.05.2010 for a sum of Rs.3,00,000/- and the cheque was presented for collection, but it was returned and thereby the complainant issued notice to the Accused and the notice was received by the Accused, but the Accused issued reply and not settled the amount, thereby the complainant has filed this complaint.



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10. The contention of the Accused is that the complainant has no source of income to lend such a huge amount. The Accused and the Accused company having turnover of transaction around Rupees One Crore per year and thereby there is no need of borrowal of such amount from the complainant. The husband of the complainant was the erstwhile employee of the Accused company, working under the first Accused as Accountant. At that time, the Accused used to give the cheques for business purpose and the same was misused by the husband of the complainant and now filed this complaint through the above said misused cheque.

11. In order to prove the case of the complainant, the complainant has examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P15. On the side of the Accused, D.W.1 to D.W.4 were examined and Ex.D1 to Ex.D11 were marked and further Ex.X1 and Ex.X2 were also marked.

12. P.W.1, who is the complainant in this case, has filed proof affidavit by stating that in the month of March 2008, the third Accused (A3) borrowed the money on behalf of the first Accused (A1) for a sum of Rs.3,00,000/- and issued a cheque on 01.05.2010. But in the evidence,



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there is no reference about the date and place with regard to the borrowal of amount. Further, the same P.W.1 in her cross-examination, admitted that she did not go to job. She is not an Income Tax assessee and her husband was also an employee, drawn a sum of Rs.8,000/- per month towards salary and the family was depending upon the income of her husband. She also admitted that from the year 1994 to 2005, her husband was working under the first accused company and also admitted that after the year 2005, the said company was closed and there was no relationship between them after the year 2005. Therefore, the complainant herself admitted that she is only housewife and her husband was only earning a sum of Rs.8,000/- towards salary. While so, it is the duty of the complainant to prove her financial capacity to lend a sum of Rs.3,00,000/- to the Accused. But, there is no evidence to prove the same.

12.1. In this context, P.W.1 has not stated anything about the mode of payment. During cross-examination, she has stated that by pledging her jewels and mortgaging the property, she lent the money. But, there is no documents to show that she pledged her jewels and mortgaged the property to the Accused. It is the duty of the complainant to prove her



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financial capacity to lend such huge money particularly, where the accused denied the financial capacity of the complainant. But, there is no sufficient evidence adduced by the complainant to prove her financial capacity. Further, the contention of the complainant is that on the date of borrowal of loan, the third Accused executed the deed of acknowledgement. But the complainant failed to obtain any other documents like Promissory note and other secured documents, when such a huge amount was given to the Accused. Further, P.W.1 herself admitted that earlier she was working in Urban Bank in the year 1995 and 1996 and thereby she knew the procedures with regard to the payment of money. While so, under what reason, she obtained such acknowledgement without any receipt or promissory note with stamp, has to be explained by the complainant. But there is no proper explanation by the complainant.

12.2.Further according to the complainant, the Accused borrowed a sum of Rs.3,00,000/- from the complainant in the month of March 2008 and the cheque was issued in the Month of May 2010. While so, what about the interest, has to be explained by the complainant. When the amount was given for interest for business purpose, then whey the



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complainant has not demanded interest from the Accused, also creates serious doubts over the case of the complainant. Further the complainant has issued notice to the Accused. In the said notice also, there is no mention about the date and the place, where the amount was given to the Accused. Further, the complainant has produced Ex.P7 receipt for a sum of Rs.75,100/- dated 12.10.2010, alleging that the said amount was paid for the pledged jewels, but the alleged money was given in the year 2008 and the receipt is pertaining to 12.10.2010 and further, the complainant attempted to mark an unregistered document, alleging that by mortgaging a property for a sum of Rs.35,000/-. She lent amount to the accused, but the said document was not marked due to non-registration.

13. Even assuming that the above said amount was true, the said document is dated 30.01.2008. But the alleged amount was given to the Accused in the month of March 2008. Therefore, the complainant has failed to prove the complaint. Further, on the side of the complainant, P.W.2, who is the husband of the complainant was examined as witness and he deposed about the complaints sent to the Chief Minister's Cell and other higher authorities and also the criminal case was pending against him. P.W.2 also in his cross-examination, admitted that he was



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working under the first Accused company and he only dealt with the Bank accounts of the company. In this context, P.W.2, during cross-examination admitted that

“வங்கிக்கும் எதிரிநிறுவனத்திற்கும் வங்கி பரிவர்த்தனை நான் தான் செய்து வந்தேன் என்றால் சரிதான். நான் தாக்கல் செய்துள்ள நிருபண வாக்குமூலத்தில் எதிரி நிறுவனத்திற்கு சம்மந்தமான ஆவணங்கள் அனைத்தையும் எதிரி நிறுவனத்திடம் ஒப்படைத்ததாக சொல்லியுள்ளேன் அதற்கான ஆவணங்கள் நீதிமன்றத்தில் தாக்கல் செய்துள்ளேனா என்றால் இல்லை. எதிரிநிறுவனத்திற்காக வங்கியில் இருந்து நான் பெற்ற காசோலைகளை எதிரிநிறுவனத்திடம் நான் ஒப்படைத்ததாக ஆவணங்கள் இருந்ததா என்றால் எதிரி பெற்றுக்கொண்டேன் என்று நான் சான்று அளிக்கவில்லை நானும் கொடுத்துவிட்டேன் என்று சான்று அளிக்கவில்லை. 1995 முதல் 2005 வரை எதிரி நிறுவனத்திற்காக வங்கிக்கு பண பரிவர்த்தனை செய்யும் பணி செய்து வந்தேன். 24.09.2005 வரை உள்ள பரிவர்த்தனைகள் அனைத்தும் என்னுடைய பெயரில் பரிவர்த்தனை நடைபெற்றுள்ளது என்றால் சரிதான்.”

14. Therefore, he himself admitted that he had only dealt with the Bank Accounts and Bank work of the first Accused company. The case of the Accused is that P.W.2, who is the husband of the complainant, while he was working in the company, misused the cheques and filed this



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complaint. The complainant failed to prove the financial source and failed to state the date and place, on which date and in which place the amount was paid to the complainant. Thereby the case of the complaint creates a serious doubt over the case and the complainant has failed to prove the case. It is true that the presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant. In this case in order to invoke the presumption under Section 139 of Negotiable Instruments Act, the complainant has to prove the foundational facts, But in this case, the complainant has not even proved the Foundational facts with regard to the acquaintance of Accused and payment of money to the Accused and other facts. Moreover, the respondents in order to rebut presumption under Section 139 of Negotiable Instruments Act, examined D.W.1 to D.W.4. D.W.1 has deposed about the Provident Fund.

15. Further the main contention of the P.W.2 is that after retirement of the husband of the complainant, he failed to settle the accounts to the Accused company and thereby his Provident Fund application was not forwarded to the concerned office. But, on perusal of evidence of D.W.1, it reveals that already the claim amount of Provident



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Fund was settled to Mr.S.P.S.Muthuraman/P.W.2. In this context, D.W.1 has deposed that the P.W.2 namely Mr.S.P.S.Muthuraman was working at Caltech Gas India Private Limited, Paaraipatti from April 2002 to February 2005 and his Provident Fund amount was paid in the month of March 2011. On 03.03.2011, he applied the form for payment of Provident Fund amount. On 15.12.2010, he received a letter from Paramasivam and Sons by stating that on 17.03.2011, the Provident Fund amount of Mr.S.P.S.Muthuraman/P.W.2 was claimed.

16. Therefore, the contention of the complainant that the accused failed to settle the Provident Fund amount is not acceptable one. Further the accused has examined the income tax officials to show that from the year 2008 to 2011, they filed income tax for around Rupees One Crore. To that effect, D5 to D7 were marked. D.W.3 has stated that the second accused (A2) had account in the Indian Bank and having Old Account No. 286, New Account No.4084854480 and the account was operated from 01.04.1995 to 23.07.2005. As per Ex.P8, M/s.Paramasivam & Sons company has authorized Mr.S.P.S.Muthuraman/P.W.2 to have the access to the company accounts. The statement of the accounts shows the



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transactions. All the transactions were taken place in the name of Mr.S.P.S.Muthuraman, who is the husband of complainant. Lastly on 24.09.2005, a sum of Rs.11,500/- was withdrawn by the said Mr.S.P.S.Muthuraman/P.W.2. Thereafter the account was inoperative. There are no Statement of Accounts and deposit of unused cheques in the said account. Therefore, from the evidence of D.W.3, it is clear that the husband of the complainant/P.W.2 was authorized to handle the account of the first Accused company and he also had full transactions in the said account and the account was inoperative from the year 24.9.2005. But the present cheque was presented on 01.05.2010, that too by the wife of the Accused without mentioning the date and place, where the Accused borrowed the amount. Therefore, the case of the Accused that the husband of the complainant was working under the first Accused company and he was dealt with the accounts and thereby cheque was misused has been probablized and also rebutted the presumption under Section 139 of Negotiable Instruments Act. In this case, the complainant has failed to prove her case and prove foundational facts of the case and cannot invoke presumption under Section 139 of the Negotiable Instruments Act. The accused has probablize his defence and also



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rebutted the presumption under Section 139 of the Negotiable Instruments Act.

17. The learned counsel appearing for the appellant has relied the judgments as follows:

1.Shree Daneshwari Traders Vs.Sanjay Jain and another reported in 2019 (3) MWN (CR.) DCC 75 (SC). Wherein the Hon'ble Supreme Court held para 18 and 19 as follows:-

"18. In the present case, by examining himself as PW1, the Complainant has discharged the initial burden cast upon him that the Cheques were issued for the rice bags purchased on credit. With the examination of PW1, the statutory presumption under Section 139 of the Act arises that the Cheques were issued by the Respondent-Accused for the discharge of any debt or other liability in whole or in part. The Courts below disbelieved the evidence of the Complainant on the ground that there are no averments in the Complaint that the commodities were sold for cash and that the Rice bags were sold on credit and the Cheques were issued for the goods sold on credit. Though the Complaint contains no specific averments that the Cheques were issued for the purchase made on credit, in his evidence, PW1 clearly stated that the Cheques were issued for the commodities purchased on credit. The Courts below erred in brushing aside the evidence of PW1 on the ground that there were no averments in the Complaint as to the purchases made by cash and purchase [sic credit]. The Courts below also erred in not raising the Statutory presumption under Section 139 of the Act that the complainant received the Cheques to discharge the debt or other liability in whole or in part.

19. It is for the Respondent-Accused to adduce evidence to prove that the Cheques were not supported by consideration and that there was no debt or liability to be discharged by him.



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The Receipts-Ex.22/C (colly) relied upon by the Respondent-Accused do not create doubt about the purchases made on credit and the existence of a legally enforceable debt for which the Cheques were issued. The Courts below erred in saying that by the Receipts-Ex.22/C (colly), the Respondent-Accused has rebutted the Statutory presumption raised under Section 139 of the Negotiable Instruments Act. The oral and the documentary evidence adduced by the Complainant are sufficient to prove that it was a legally enforceable debt and that the Cheques were issued to discharge the legally enforceable debt. With the evidence adduced by the Complainant, the Courts below ought to have raised the presumption under Section 139 of the Act. The evidence adduced by the Respondent-Accused is not sufficient to rebut the presumption raised under Section 139 of the Act. The defence of the Respondent that though he made payment for the commodities/Rice bags, the blank Cheques were not returned by the Appellant-Complainant is quite unbelievable and unacceptable. The impugned Judgment of the High Court cannot be sustained and is liable to be set aside. The Respondent-Accused is convicted under Section 138 of the Negotiable Instruments Act in both the complaints; however, considering that the Cheque transaction was of the year 2003, at this distant point of time, we do not deem it appropriate to impose any Sentence of Imprisonment on the Accused."

2. Rohitbhai Jivanlal Patel Vs.State of Gujarat and others reported in 2019 (2) MWN (CR.) DCC 26 (SC). Wherein the Hon'ble Supreme Court held in para 19 as follows:

"19. Here in above, we have examined in detail the findings of the Trial Court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the Trial Court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the Judgment of the Trial Court. The observations of the Trial Court that there was no documentary evidence to show the source of funds with the Respondent to advance the Loan, or that the Respondent did not record the transaction in the form of receipt of even Kachcha Notes, or that there were inconsistencies in the Statement of the Complainant and his Witness, or that the



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Witness of the Complaint was more in know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the Complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the Complainant by virtue of Sections 118 & 139 of the N.I. Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the Complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the Accused has been able to rebut the presumption or not. The other observations as regards any variance in the Statement of Complainant and Witness; or want of knowledge about dates and other particulars of the Cheques; or washing away of the earlier Cheques in the rains though the office of the Complainant being on the 8th floor had also been of irrelevant factors for consideration of a probable defence of the Appellant. Similarly, the factor that the Complainant alleged the Loan amount to be 22,50,000 and seven Cheques being of ₹3,00,000 each leading to a deficit of ₹1,50,000 is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of Cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 Cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of ₹22,50,000) was distinctly stated by the Accused-Appellant in the aforesaid Acknowledgment, dated 21.3.2017."

3.Bir Singh vs. Mukesh Kumar reported in 2019 (1) MWN (Cr.) DCC 164 (SC). Wherein the Hon'ble Supreme Court held in para 36, 37, 38 as follows:

"36. The proposition of law which emerges from the Judgments referred to above is that the onus to rebut the presumption under Section 139 that the Cheque has been issued



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in discharge of a debt or liability is on the Accused and the fact that the Cheque might be Post-dated does not absolve the drawer of a Cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 & 139, makes it amply clear that a person, who signs a Cheque and makes it over to the Payee remains liable unless he adduces evidence to rebut the presumption that the Cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the Cheque may have been filled in by any person other than the drawer, if the Cheque is duly signed by the drawer. If the Cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank Cheque is voluntarily presented to a Payee, towards some payment, the Payee may fill up the amount and other particulars. This in itself would not invalidate the Cheque. The onus would still be on the Accused to prove that the Cheque was not in discharge of a debt or liability by adducing evidence."

On a careful reading of the said case laws it is clear that a person, who signs a Cheque and makes it over to the Payee remains liable unless he adduces evidence to rebut the presumption that the Cheque had been issued for payment of a debt or in discharge of a liability. The presumption is that the existence of a legally enforceable debt is to be presumed in favour of the complainant and the accused has to adduce evidence to rebut the presumption under section 139 of Negotiable Instruments Act. But in the case on hand the complainant failed to prove the case, per contra the accused probalished his defence through sufficient evidence thereby the said case laws will not be helpful to decide the case in favour of the complainant.



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18. The trial Court in its judgment, has taken a view that the Accused has not denied the signature found in the complaint and the complainant proved her financial capacity to pay the amount by pledging her jewels and mortgaging the properties. But those mortgaged documents are unregistered documents and cannot be relied and those documents were also not marked. Further, the alleged pledging of jewels were not proved and only the complainant produced the redemption of jewels in the year 2010. But the alleged lending money was given in the year 2008. Further the trial Court failed to consider that P.W.2 himself admitted the employment under the first accused company and he only managed the accounts of the company and had transactions with the Bank and the Bank account was inoperative from 24.09.2005 onwards. Thereby the accused has probablized his defense.

19. Considering the above said aspects, the trial Court has erroneously convicted the Accused by holding that the complainant has proved her case.



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20. The Appellate Court after elaborate discussion and discussing the citations of the Hon'ble Supreme Court of India as well as the High Courts, had elaborately gone into the facts and evidences of the case and correctly acquitted the Accused. Therefore, the judgment of the trial Court is not sustainable and the judgment of the Appellate Court is well reasoned.

21. In view of the above said discussions, there is no perverse or infirmity found on the judgment of the Appellate Court, thereby there is no warrant to interfere by this Court.

22. In the result, this Criminal Appeal is dismissed by confirming the judgment of Appellate Court in Criminal Appeal No.1 of 2014 dated 31.08.2015 by reversing the judgment and conviction passed by the trial Court in S.T.C.No.900 of 2010 dated 12.12.2013. No costs.

23.11.2023

Index:Yes/No
Neutral Citation:Yes/No
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To

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- 1.The Additional District and Sessions Judge,
Virudhunagar.
- 2.The Judicial Magistrate No.I,
Virudhunagar.



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P.DHANABAL, J.

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Pre-Delivery judgment made in
Crl.A.(MD).No.308 of 2015

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