

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.11.2016.

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

Criminal Appeal No.630 of 2014

N.Krishnagiri

Appellant/Complainant

vs.

1. M/s.18 Steps Medias Private Limited,
rep. by its Managing Director
Mr.Ravikumar
No.5, New No.80, Thiruveeka Street,
Ikkarai Booluvapatti,
Coimbatore 641 114.
2. Mr.Ravikumar,
Managing Director of
Mr.Ravikumar
No.5, New No.80, Thiruveeka Street,
Ikkarai Booluvapatti,
Coimbatore 641 114.
3. Mr.R.Rangaraj,
Chairman of
Mr.Ravikumar
No.5, New No.80, Thiruveeka Street,
Ikkarai Booluvapatti,
Coimbatore 641 114.

Respondents/Accused

Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure against the judgment dated 20.6.2014 made in S.T.C.No.1847 of 2012 on the file of Judicial Magistrate No.1, Pollachi.

For Appellant : Mr.C.D.Sugumar

For RR1 and 2 : Mr.R.Kannan

For R3 : Mr.Venkatachalapathy (No appearance)

JUDGMENT

Heard Mr.C.D.Sugumar, Learned counsel for the Appellant and Mr.R.Kannan, Learned counsel for Respondents 1 and 2.

2. The Appellant/Complainant has focused the instant Criminal Appeal No.630 of 2014 as against the judgment dated 20.6.2014 in S.T.C.No.1847 of 2012, passed by the Learned Judicial Magistrate I, Pollachi.

3. The Learned Judicial Magistrate I, Pollachi, while passing the impugned judgment in S.T.C.No.1847 of 2012 (filed by the Appellant/Complainant), at para 14, had observed that there was no direct evidence to show that the Accused, who are residing at a different village/place, had got acquainted with the Appellant/Complainant and further, when there was no evidence as to at which place the money was given to the Accused and added further when the Appellant/Complainant, after stating that the Accused had issued the 10.3.2012 case cheque, in the cross examination had deposed that he had received the undated cheque, which was a contradictory one. Also, the trial court had proceeded to observe, in its judgment, that the Complainant, in his evidence, had stated that A2 and A3 had issued Exs.P7 and P8 notices and in the cross-examination had stated that he does not know whether reply notices were sent by the Accused. Moreover, the trial court had borne in mind that although it was mentioned that the Accused had paid two months interest, but, it was not mentioned as to what was the amount paid towards interest by each Accused and regarding that aspect, there was no evidence and besides that the trial court had observed that when the document No.1592/1989 was purported to be deposited by the Accused at the time of receiving money, the same was not produced before the court. Moreover, the trial court had come to a resultant conclusion that under section 139 of the Negotiable Instruments Act, the presumption was rebuttal and since the case was not proved beyond reasonable doubt against the Accused, the benefit of doubt was given in favour of the Accused and ultimately, found the three Accused not guilty under section 138 of the Negotiable Instruments Act and acquitted them as per section 255(1) of the Code of Criminal Procedure.

4. Challenging the validity, legality and correctness of the Judgment of Acquittal in S.T.C.No.1847 of 2012, passed by the Learned Judicial Magistrate I, Pollachi, the Appellant/Complainant has preferred the present appeal before this court, essentially contending that the trial court had erroneously held that mere suggestions putforth by means of cross-examination of PW1 by the Accused as conclusive proof of rebuttal evidence and in fact, the legal presumption was not properly taken into account by the trial court, which had resulted in serious miscarriage of justice.

5. The Learned counsel for the Appellant/Complainant urges before this court that the cross-examination of PW1, in regard

to the source of income of the Appellant/Complainant or as to the non-production of the alleged original document given as security or to the Degree of familiarity of the Complainant, etc., were not able to unearth any substance, which should have been considered as 'Rebuttal Evidence' worthy of consideration by the trial court. Viewed in that perspective, the judgment of acquittal passed by the trial court is, per se, an illegal one in the eye of law.

6. Advancing his argument, the Learned counsel for the Appellant submitted that the reply notices Exs.P7 and P8 were very much before the trial court and in reality, the standard of proof expected is only that of an ordinary prudent man's knowledge and memory, but, the contra view taken by the trial court is not a proper and valid one.

7. Expatiating his submission, the Learned counsel for the Appellant submits that the trial court had erroneously held that the 'onus of proof' on 'source of income' was on the Appellant/Complainant, much against the statutory presumption under section 139, read with Explanation to Section 138 of the Negotiable Instruments Act, 1881.

8. Lastly, it is the stand of the Appellant/Complainant that the Respondents/Accused had not let in any evidence in consensus with the reply notices Exs.P7 and P8. Further, it is represented that looking at from any angle, the judgment of the trial court needs to be set aside in the eye of Law.

9. Conversely, it is the submission of the Learned Counsel for Respondents No.1 and 2/A1 and A2 that the trial court had considered the evidence of PW1 and took note of Exs.P1 to P8 and considering the facts and circumstances of the present case, it had come to a resultant conclusion that the Appellant/Complainant had not established his case beyond reasonable doubt against the Respondents/Accused and found them not guilty under section 138 of the Negotiable Instruments Act, 1881 and consequently, acquitted them under section 255(1) of the Code of Criminal Procedure and the same need not be displaced by this court at this distant point of time, sitting in 'Appellate Jurisdiction'.

10. At this juncture, this court, on perusal of the complaint (filed by the Appellant/Complainant under sections 138 and 142 of the Negotiable Instruments Act read section 200 of the Code of Criminal Procedure), is of the considered view that the Appellant/Complainant, at para 2 and 3 of the complaint, had clearly averred as under:-

"2. The Accused had borrowed a sum of Rs.7,00,000/- (Rupees Seven Lakhs Only) from the Complainant on 21.6.2011 agreeing to pay the same alongwith interest at the rate of 12% per annum on demand and also the 2nd Accused had issued a Cheque bearing No.196754, dated 10.3.2012 drawn in IDBI Bank, Coimbatore towards discharging the said liability on the same day itself and the 2nd and 3rd Accused had joint deposited the title deed bearing No.1592/1989 which stands in the name of 3rd Accused, as security for the above said borrower.

3. The Complainant further submits the Accused had paid interest only for two months and all the Accused had miserably failed to pay the interest amount and all the Accused had been postponing the payment of interest on one pretext or the other. The Complainant further submits that after the repeated demands made upon the Accused, the Accused had given instruction to the Complainant to present the cheque for collection and as per the instruction of the Accused, the cheque was presented for collection in his bank Axis Bank, Pollachi and the cheque was dishonoured by the Accused Bank with an endorsement "Funds Insufficient" on 8.5.2012 and the same was intimated to the Complainant on 9.5.12 and when the Complainant contacted the Accused, the Accused evaded the Complainant and the act of the Accused amounts to cheating."

11. The crystalline case of the Appellant/Complainant is that the Accused had paid interest only for two months and all the Accused had miserably failed to pay the interest amount and they were postponing the payment of interest on some pretext or the other.

12. That apart, the Appellant/Complainant, in the complaint, takes a plea that after repeated demands made on the Accused, the Accused gave instructions to the Appellant/Complainant to present the cheque for collection and as per the instruction of the Accused, the cheque was presented for collection in his Bank viz., AXIS Bank, Pollachi and the cheque was dishonoured by the Bank of the Accused with an endorsement 'Funds Insufficient' on 8.5.2012, etc., and inasmuch as the Second and Third Accused had received the notice of the Appellant/Complainant on 28.5.2012 and sent an undated reply with false allegations, the Appellant/Complainant was perforced to file the complaint in question before the trial court, in respect of an offence under section 138 of the Negotiable Instruments Act.

13. In this connection, this court refers to the evidence of PW1 for a fuller and better appreciation of the facts of the case in a proper and real perspective.

14. PW1 (Appellant/Complainant), in his evidence, had deposed that on 21.6.2011, he had given a sum of Rs.7,00,000/- to the Second Respondent/A2 and that the Third Respondent/A3 for the said amount had given in documents for the purpose of 'security' and that A2, at the time of receipt of money, issued him a cheque dated 10.3.2012 drawn on IDBI Bank and for security, the Third Respondent/A3 had issued a sale deed in respect of his house and that the Accused had informed him to pay interest of 12% and that they had paid interest properly for two months and thereafter they had not properly replied and on 7.5.2012, they informed him to deposit the cheque for the purpose of collection and on 7.5.2012, he had deposited the cheque on AXIS Bank Branch.

15. It is the further evidence of PW1 that the cheque dated 10.3.2012 got returned on 8.5.2012 due to insufficient funds which was informed to him on 9.5.2012, and he issued an Advocate notice on 21.5.2012 to the Accused which was received by them and inspite of receipt of notice, they had not paid him the money.

16. PW1 (Appellant/Complainant in his cross-examination) had deposed that he had not mentioned in the notice as to how he knew the Accused and for how many days, he got acquainted with them. Further, PW1 adds in his evidence that he has an AXIS Bank account at Pollachi Branch and in his bank account, he had transaction of Rs.1,00,000/- to Rs.1,50,000/- at the maximum and he is not paying the income tax and he had admitted in his evidence that in the notice issued to the Accused, he had not specifically stated whether a sum of Rs.7,00,000/- was given to the Accused in cash or through cheque and has also not mentioned about this aspect both in his complaint and in the sworn statement.

17. PW1, in his evidence, had stated that when he gave money to the Second Respondent/A2, he had not received any document relating to A1 and he only received the House document and the loan taken by the Second Respondent/A2 from him was for A1 and at the time of giving the present loan, he took the property document from the Second and Third Respondents/A2 and A3 on 21.6.2011 and he received the cheque on 21.6.2011, but, in the cheque the date was not mentioned. Besides this, PW1 had went on to state that in the cheque given to him, there was signature

of A2(Second Respondent), but, the same was unfilled and the amount was filled up and that it was correct to state that he had not produced the document given by A3/Third Respondent.

18. Continuing further, PW1, in his evidence, had also deposed that in the notice sent by him to the Accused, he had only demanded the sum of Rs.7,00,000/- given by him and that he had not claimed the interest.

19. Before the trial court, the defence taken by the Respondent/Accused was that the Third Respondent/A3 obtained a loan from one Vaidyanathan, son of Venkatesa Iyer from Coimbatore on 3.1.2011 and for the said loan, as security, this cheque and another cheque were given to the said Vaidyanathan and that the said Vaidyanathan had wrongly used the said cheques and through his son Gurunathan had filed a case in C.C.No.153 of 2012 on the file of the Learned Judicial Magistrate 2, Coimbatore (Fast Track Court) and that through the Complainant, the present case was filed against them.

20. The clear-cut case of the Appellant/Complainant is that the Accused had given the cheque dated 10.3.2012 on the same day to the Appellant/Complainant, but, PW1 (Appellant/Complainant), in his chief examination had not stated that the Accused had issued an unfilled cheque, but, filled up only the date, but, he had admitted the same only in his cross-examination. Moreover, even though PW1, in his evidence, had stated that he does not know about the Reply Notices, Exs.P7 and P8 sent by the Accused, but, in his sworn affidavit, he had mentioned that Exs.P7 and P8 were reply notices issued by the Accused and this is clearly not a favourable circumstance to the Appellant/Complainant, in the considered opinion of this court.

21. The core aspect to be essentially looked into is that when the Appellant/Complainant had come out with a concrete case that the Accused, apart from Ex.P1 cheque, had deposited a document bearing No.1592/1989 in the name of the Third Accused, when he paid a sum of Rs.7,00,000/- to the Accused, not even a copy of the said document which was deposited by the Accused, was produced and filed before the trial court on behalf of the Appellant/Complainant which factor undoubtedly weighs against the Appellant/Complainant.

22. At this stage, it is represented on behalf of the Appellant/Complainant that the Appellant is a farmer and therefore, he was in possession of the requisite sum of Rs.7,00,000/- and only that amount was given to the Second

Accused and the contra view taken by the trial court as to the capacity or resourcefulness or wherewithals of the Appellant/Complainant was not established, is not tenable in the eye of Law.

23. The Learned Counsel for the Appellant/Complainant relies on the decision of the Honourable Supreme Court in RANGAPPA v. MOHIDEEN (AIR 2010 SC 1898) whereby and wherein it is laid down as under:-

"The presumption mandated by S.139 of the Act does indeed include the existence of legally enforceable debt or liability. This is of course in the nature of rebuttable presumption and it is open to the Accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However there can be no doubt that there is an initial presumption which favours the Complainant. S.139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by S.138 can be better described as a regulatory offence since the bouncing of a cheque is largely in nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the Accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is settled position that when an Accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the Accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. The Accused can rely on the materials submitted by the Complainant in order to raise such a defence and it is conceivable that in some cases the Accused may not need to adduce evidence of his/her own."

24. It is an axiomatic principle in Law that there shall be a presumption unless the contrary is proved that the 'Holder of a Cheque' received the 'Cheque' in 'Discharge of a Liability'. The aim of bringing section 138 of the Negotiable Instruments Act, 1881 is to instill faith in the efficacy of banking operations and credibility in transaction of business on 'Negotiable Instruments'. It is true that the offence under section 138 of the Negotiable Instruments Act, is not akin to murder, Simple/Grievous hurt as the case may be. One cannot ignore a vital fact that an offence under section 138 of the Act is created purely by a legal fiction. When a cheque is issued not for the purpose of discharge of any debt or other Liability, the maker of the cheque is, undoubtedly, not liable for any prosecution, in the considered opinion of this court.

25. The ingredients of section 138 of the Act are (1) that there is a legally enforceable debt; (2) that the cheque was drawn from the account of bank for discharge in entirety or in part of any debt or other liability which presupposes a legally enforceable debt; and (3) that the cheque was issued and was returned because of 'insufficiency of funds'.

26. In this regard, this court pertinently points out that the presumption under section 139 of the Act extends only to the issuance of cheque towards discharge of legally enforceable debt or liability and it has to be raised only after the Complainant proves that such debt or liability, in fact, exists as on the date of cheque in question and that the cheque was given to him by the Accused. By now, the law is well settled that the 'Burden of Proof' for rebutting presumption is not the same for proving of a criminal charge. For rebuttal of presumption arising in favour of prosecution, the principle of 'preponderance of probability' clearly applies whereas to prove a 'Criminal Charge', a strict proof squarely applies.

27. In a criminal case, it is the duty of the prosecution/Complainant to establish its/his case against the particular Accused beyond the shadow of doubt. In the instant case, there was no evidence tendered by PW1 (Appellant/Complainant) before the trial court as to the place where the sum of Rs.7,00,000/- was given by the Appellant to the Second Respondent/A2 and that when the complaint mentions that the Accused had given a cheque on 10.3.2012, PW1(in cross-examination) had clearly stated that he had received only the undated cheque which is clearly a favourable circumstance in favour of the Respondents/Accused and this aspect is certainly not helpful to the Appellant/Complainant, as opined by this court.

28. Further, before the trial court, there was no evidence on behalf of the Appellant/Complainant as to in what manner the Third Respondent/A3 took part in Ex.A1 Company and that before the trial court, PW1 (Appellant/Complainant), had tacitly admitted that in his bank account, at the maximum, there was transaction of only Rs.1,50,000/- and that being the fact situation, it is not established to the subjective satisfaction of this court from which source, the Appellant/plaintiff had given a sum of Rs.7,00,000/- to the Accused and in this regard, no semblance of document was filed and this also creates a simmering doubt as to the wherewithal or resourcefulness of the Appellant/Complainant. In short, this court holds that the Appellant/Complainant had failed to establish that he had the requisite means to advance a sum of Rs.7,00,000/- to the Second Respondent/A2.

29. In the light of the detailed and qualitative discussions and taking note of the entire conspectus of the attending facts and circumstances and also bearing in mind the facts and circumstances of the present case in a cumulative fashion, this court comes to an irresistible conclusion that the Appellant/Complainant had failed to establish his case before the trial court. To put succinctly, on behalf of the Respondent/Accused the probable defences raised were indeed cogent, coherent and convincing and this court is in complete agreement with the view taken by the trial court that the Respondents/Accused were not found guilty and the 'Acquittal of the Accused', in the considered opinion of this court, does not suffer from any material irregularities or patent illegalities in the eye of Law. Consequently, the appeal fails.

In fine, the criminal appeal is dismissed. The judgment of the trial court dated 20.6.2014 in S.T.C.No.1847 of 2012 is confirmed by this court, for the reasons assigned above.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To

1.Judicial Magistrate No.1,
Pollachi.

2.The Chief Judicial Magistrate,
Pollachi.

3.The Public Prosecutor,
High Court, Chennai-104.

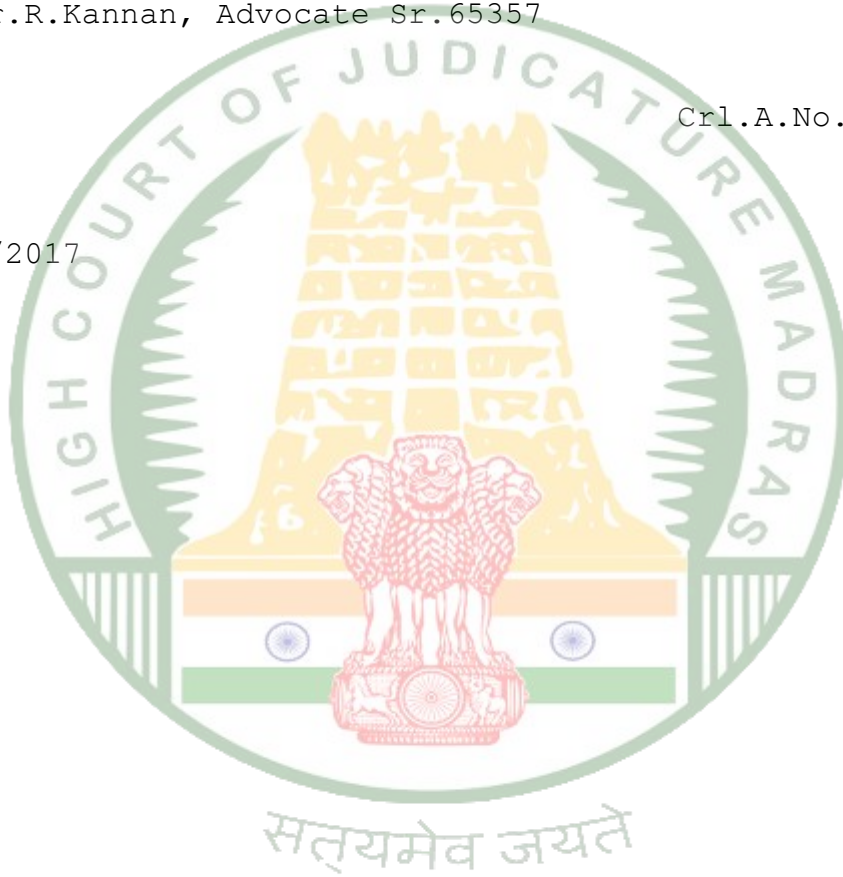
4.The Section Officer,
Criminal Section,
High Court, Chennai.

+1cc to Mr.C.D.Sugumaran, Advocate Sr.65083

+1cc to Mr.R.Kannan, Advocate Sr.65357

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