

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CRL.A.No.454 of 2017

K.Mallesan

... Appellant

versus

K.Madhappan

... Respondent

PRAYER: Criminal Appeal filed under Section 378 (4) of the Criminal Procedure Code, against the order of acquittal passed by the learned Additional District Judge, Krishnagiri, dated 20.09.2016 in Crl.A.No.15 of 2016 setting aside the order of conviction passed by the learned Fast Track Judicial Magistrate, Hosur, dated 09.12.2015 in STC.No.122 of 2015.

For Appellant : Mr.J.Hariharan
for Mr.V.Nicholas

For Respondent : Mr.A.Balamurugan

J U D G M E N T

The complainant in S.T.C.No.122 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court), Hosur, is the appellant herein. He has filed the complaint for the offence under Section 138 of Negotiable Instruments Act. It is alleged in the complaint that the respondent had

borrowed Rs.13,00,000/-, for his business purpose from him on 15.07.2013 and executed a promissory note. The respondent repaid Rs.1,00,000/- on 27.10.2014 and another Rs.1,00,000/- on 22.12.2014. Thereafter, the respondent issued a postdated cheque dated 21.02.2015 for Rs.11,00,000/- for discharge of the said debt. The cheque when presented for collection was dishonoured with the remarks "insufficient funds". The complainant called upon the respondent to repay the amount covered by the cheque by a notice dated 12.03.2015. The respondent refused to receive the notice and also not repaid the amount. Hence, the complaint.

2. In support of the case of the complainant, he examined himself as P.W.1 and marked 7 documents. The respondent examined himself as D.W.3 and 2 other witnesses and marked 7 documents.

3. The defence of the respondent was that, while the complainant was working in his Company during 2012, he borrowed Rs.1,35,000/- from the complainant and that in the year 2014, he has discharged the loan by paying Rs.2,00,000/-. He has further alleged that during the course of employment, the complainant stolen cheques from the company and transferred Rs.7,65,000/- in favour of his relative and the respondent has lodged a complaint against the complainant. The present case

has been filed by misusing a stolen cheque.

4. The Trial Court accepted the case of the complainant and convicted the respondent. Aggrieved by the order of conviction, the respondent preferred an Appeal in Crl.A.No.15 of 2016 on the file of the Additional District and Sessions Judge, Krishnagiri. The Appellate Judge reversed the order of conviction holding that, the complainant has failed to prove his case and that, the cheque was issued for the discharge of legally enforceable debt. Against which, the present Appeal has been filed.

5. The learned counsel appearing for the appellant would submit that the lower Appellate Court failed to see that the accused has admitted his signature on the cheque and failed to see that the complainant has proved his case beyond reasonable doubt.

6. The learned counsel appearing for the respondent would submit that there are enough materials available on record to disprove the case of the complainant.

7. The respondent has admitted that the cheque belongs to him. He has also admitted the signatures on the cheque. Admittedly, the cheque

was dishonoured by the Bank with the remarks “insufficient funds”. In these circumstances, the Court has to presume that the cheque was issued for discharge of legally enforceable debt in terms of Section 139 of Negotiable Instruments Act. It is for the respondent to discharge the initial burden. The respondent can discharge his burden on the basis of the materials available on record. In **K.PRAKASHAN vs. P.K.SURENDERAN [(2008) 1 SCC 258]**, the Hon'ble Supreme Court has held thus; *“that standard of proof in discharge of the burden in terms of Section 139 of the Act being of preponderance of a probability, the inference therefor can be drawn not only from the materials brought on record but also from the reference to the circumstances upon which the accused relies.”*

8. Bearing in mind, the dictum laid down by the Hon'ble Supreme Court, I have carefully perused the materials. The complainant in his evidence has admitted that he was an employee under the respondent on a salary of Rs.7,000/- p.m. As per Ex.D.3 dated 01.02.2012, the complainant was selected for the post of Trainee Operator for a period of 6 months (i.e.) 01.02.2012 to 01.07.2012.

9. The respondent lodged a complaint dated 30.12.2014 [Ex.D.5] against the complainant to the Inspector of Police, Sipcot Police Station,

Hosur, wherein, he has alleged that the complainant obtained his signature on a cheque under threat. According to him, the complainant paid Rs.1,35,000/- towards supply of materials to his company, while he was away from the company. According to him, this amount was repaid. In Ex.D5, he has alleged that he has paid Rs.1,35,000/- in the presence of Police and he has paid Rs.1,00,000/- on 27.10.2014 and another Rs.1,00,000/- on 21.12.2014. The complainant in his evidence admitted that he has issued Ex.D.1 and Ex.D.2 receipts dated 27.10.2014 and 21.12.2014 respectively.

10. According to the complainant, the respondent borrowed Rs.13,00,000/- and he has repaid Rs.2,00,000/- and thereafter, the cheque, dated 21.02.2015, in question was issued to him. It is significant to note that there is no agreement for payment of interest. According to the complainant, the loan amount is Rs.13,00,000/- and Rs.2,00,000/- has been paid under Ex.D.1 and Ex.D.2 and for the balance of Rs.11,00,000/-, the cheque in question was issued. It is impossible to believe that the complainant lent Rs.13,00,000/- without any agreement for payment of interest.

11. The defence of the respondent is that while the complainant was working in his Company, the complainant without his knowledge transferred a sum of Rs.7,65,000/- in the name of his relative Adilakshmi Mani.

A perusal of Ex.D.4 [Statement of Account], issued by the Indian Bank, would show that on 30.12.2014, a sum of Rs.7,65,000/- was paid to Adilakshmi Mani from the account of the respondent. The complainant in his evidence would admit that Adilakshmi is the mother-in-law of his daughter and Mani is the father-in-law of his daughter.

12. In Ex.D.1 and Ex.D.2, it is stated that the amount was paid towards principal. However, the balance amount to be paid was not mentioned in these receipts. These documents do not indicate that a sum of Rs.13,00,000/- was lent to the respondent. The respondent has also suggested that the appellant has no source of income to lend a huge sum of Rs.13,00,000/-. The complainant has not produced any records to show that he has got Rs.13,00,000/- on 15.07.2013. The complainant has produced Ex.P.7 series of receipts to show that he has sufficient source to lend Rs.13,00,000/-. However, the person, who issued bills/receipts was not examined to prove the actual payment of money to the complainant. In his evidence, the complainant would admit that except agriculture income, he has no other source of income. In **KRISHNA JANARDHAN BHAT vs. DATTATRAYA G. HEGDE [(2008) 4 SCC 54]**, the Hon'ble Supreme Court has held thus: *"Courts have to take notice that ordinarily in terms of Section 269-SS. Income Tax Act, any advance taken by way of loan of more than Rs.20,000/- had to be*

made by an account payee cheque only”.

13. The above mentioned circumstances, in my considered view, are sufficient to hold that the respondent has rebutted the presumption drawn against him in terms of Sections 118 and 139 of Negotiable Instruments Act.

14. After the rebuttal of presumptions by the respondent, it is for the complainant to prove his case that the cheque was issued to discharge the legally enforceable liability. Except, the disputed cheque and the interested oral testimony of the complainant, there is no other dependable evidence to show that the complainant lent Rs.13,00,000/- and the cheque in question was issued in partial discharge for the said liability.

15. The present Appeal is against an order of acquittal. It is well settled that the Appellate Court should not interfere with an order of acquittal unless it finds that the view taken by the trial court is perverse. In the case on hand, as the lower Appellate Court has taken a reasonably possible view. Having regard to the evidence and circumstances, I hold the lower Appellate Court was justified in acquitting the accused. I do not find any ground to hold a different view. The Appeal is liable to be dismissed.

16. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the learned Additional District and Sessions Judge, Krishnagiri in Crl.A.No.15 of 2016 on 20.09.2016 is hereby confirmed.

22.09.2017

Index : Yes/No

Internet : Yes

Speaking Order/Non speaking order

mrp/sri

To

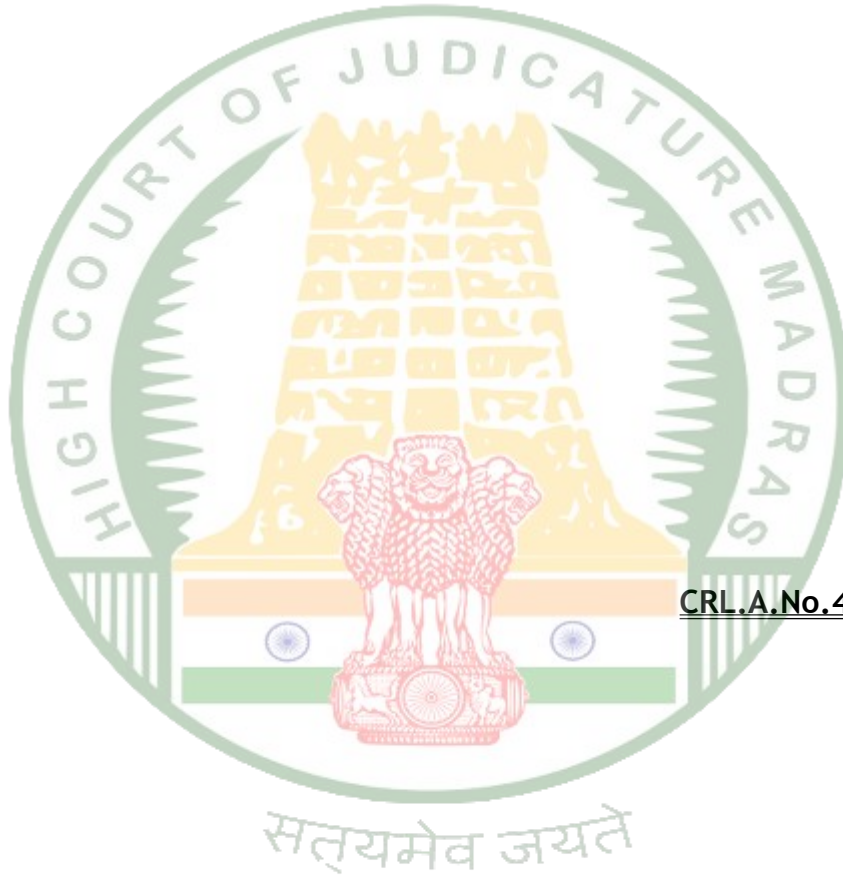
1. The Additional District and Sessions Judge,
Krishnagiri.

2. The Judicial Magistrate,
(Fast Track Court),
Hosur.

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N.AUTHINATHAN, J.

mrp/sri



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