IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.138 of 2007

N.Govindasamy .. Appellant

Vs

A.Jeyabalan .. Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal of the respondent passed by the learned District Munsif - Cum - Judicial Magistrate, Neyveli on 03.08.2006 in C.C.No.282 of 2002 and allow the appeal and convict the respondent for the offence under Section 138 of the Negotiable Instruments Act and direct the respondent to pay compensation to this appellant.

For Appellant : Mr.R.Thirugnanam
For Respondent : Mr.T.Sivagnanasambandam

JUDGEMENT

The appeal has been filed against the order of acquittal passed by the learned District Munsif cum Judicial Magistrate, Neyveli in C.C.No.282 of 2002 dated 03.08.2006.

2. The appellant/complainant has filed a complaint under Section 138 of Negotiable Instruments Act against the respondent/accused. The above complaint has been filed on the ground that the respondent borrowed a sum of Rs.2 lakhs on 10.09.2001 as a hand loan for his family expenses and on the date of borrowal, he has issued a post dated cheque drawn on Lakshmi Vilas Bank, Salem Branch dated 09.10.2001. When the same was presented by the complainant before the Bank, it was returned on the ground of "insufficient funds". Thereafter, the appellant/complainant has given a legal notice to the respondent demanding payment. On receipt of the said notice, he has sent a reply notice denying the borrowal and also further stating that the disputed cheque has been given to one P.S.K Chit funds in the year 1992 and the appellant, being the agent of the above Chit Fund, now misused the cheque. Since the respondent failed to pay the amount, the present complaint has been filed. The Court below also taken cognizance of the

complaint and issued summons to the respondent.

3. During the trial, in order to prove his case, the appellant examined himself as P.W.1 and the Bank Manager as P.W.2 and also marked Ex.A.1 to Ex.A.14. After the examination of the witnesses, the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same.

4. In order to prove his case, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B5 were marked. According to the respondent, earlier in the year 1992, the respondent had borrowed some money from one P.S.K.Chit Funds, in which, the complainant was working as an agent. At the time of borrowal, they have opened an account in the name of the respondent and obtained 10 signed cheques. Out of which, already they have used 4 cheques and the remaining 6 cheques were with the above Chit Fund Company. The respondent issued a legal notice to the P.S.K. Chit Fund Company as well as to the complainant on 10.10.1992, which was marked as Ex.B.5 asking the appellant and the Chit Company to return the cheques. For that the complainant did not give any reply. Now, the complainant/appellant using one of the cheques, which was available with the Chit Fund Company, filed the present complaint against the respondent. Apart from that various other cases were also filed against the appellant before the various Court, which were also ended in conviction.

5. Considering all those materials, the trial Court acquitted the accused stating that the disputed cheque was issued only in the year 1992 not in the year 2001 as stated by the complainant and the complainant also did not prove the liability. Now, challenging the above order of acquittal, the present appeal has been filed.

6. I have heard Mr.T.Thirugnanam, learned counsel appearing for the appellant and Mr. T.Signanasambandam, learned counsel appearing for the respondent and also perused the materials available on record, carefully.

7. It is the specific case of the appellant/complainant that the respondent borrowed a sum of Rs.2 lakhs on 10.09.2001 and on the date of borrowal he issued a post dated cheque. The respondent admitted the signature in the cheque, but denied the receipt of loan amount from the appellant. The contention of the respondent is that the cheque was issued to one Chit Fund Company, in which the complainant was working as an agent. Now, the above cheque has been misused by him.

8. On perusal of the records, it could be seen that the

respondent/accused has admitted the signature in the cheques. Hence, there is an initial presumption under Section 139 of Negotiable Instrument Act that the cheque had been issued to discharge the legally enforceable debt, but it is only a rebuttable presumption and it can be rebutted by raising a probable defence. In the instant case, the defendant stated that he had borrowed money from a Chit Fund Company in the year 1992 and at that time, 10 signed cheques were given to the Chit Fund Company. In which, 4 cheques were already utilized by the chit fund company and out of the remaining 6 cheques, one of the cheques was misused by the appellant and the present complaint has been filed. In order to prove his case the defendant marked Ex.B5 legal notice issued to the appellant as well as the Chit Fund Company asked him to return the remaining cheques. The receipt of the notice was not denied by the appellant and it was also admitted that the appellant was working as agent in the Chit Fund Company. P.W.1 also admitted that the disputed cheque was issued by the bank in the year 1992 . The Manager of the Chit Fund Company was examined as D.W.2 and he has also admitted the receipt of Ex.B.5 notice. Apart from that, the Chit Fund Company had also filed 2 criminal cases against the respondent under Section 138 of Negotiable Instruments Act in respect of two cheques in cheque Nos.109305 and 109306, which were ended in acquittal. It is the case of the respondent that 10 cheque numbers given by him to the Chit Fund Company is from 109301 to 109310. In the instant case, the disputed cheque number is 109303, which is one of the cheques given by the respondent to the Chit Fund Company. From all those materials, the respondent/accused raised a probable defence that the cheque issued in the year 1992 to the Chit Fund Company, and it has been misused by the appellant and the present complaint has been filed.

9. In the above circumstances, as the respondent has raised a probable defence and raised the initial presumption, now, the burden shifts on the appellant to prove that there was a legally enforceable debt. But, absolutely, there is no material available on record to show that the respondent borrowed the money from the appellant in the year 2001. Except the disputed cheques, the appellant did not produce any material to show that there was a legally enforceable liability. Considering all those materials, the trial Court rightly came to a conclusion that the appellant had failed to prove the charge beyond reasonable doubt and acquitted the accused.

10. I have carefully gone through the materials and I find no illegality or irregularity or perversity in the order passed by the court below, and find no merit in the appeal, hence, the Criminal Appeal fails and deserves to be dismissed.

11. In the result, the Criminal Appeal is dismissed. The judgments of the Court-below in C.C.No.282 of 2002 dated 03.08.2006 is hereby confirmed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dh/mrp

To

The District Munsif - Cum -
Judicial Magistrate, Neyveli.

Crl.A.No.138 of 2007

KS(CO)
GN(27/09/2018)