

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2017

Pronounced on : 22.03.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Cr1.A.No.22 of 2016

C.Kathirvel ... Appellant/Complainant

V.

1.M/s.K.S.V. Cotton Mills (P) Ltd.,
Rep. By its Managing Director S.Kathirvel
Gujiliyamparai, Vedachandhur,
Dindikkal District - 624 703.

2.S.Kathirvel ... Respondents/Accused

Prayer: Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the order acquitting the Accused in S.T.C.No.314 of 2012 dated 30.10.2015 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruchengode.

For Appellant : Mr.Arockiadoss for
Mr.S.Viswanathan
For Respondents : Mr.I.C.Vasudevan

JUDGMENT

The Appellant/Complainant has preferred the instant Criminal Appeal being dissatisfied with the Judgment of Acquittal passed by the Learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruchengode in S.T.C.No.314 of 2012 dated 30.10.2015.

2.The trial Court, while passing the impugned Judgment in S.T.C.No.314 of 2012 on 30.10.2015, at paragraph 10, had, inter alia, observed that '... Further, when an average prudent man advancing loan without obtaining other documents and also not knowing the full details of the Accused purported to have lent a sum of Rs.2,50,000/- was not a believable one and also opined that the Appellant/Complainant had adduced evidence in a contradictory manner quite inconsonance with the repudiation of presumption under Section 139 of the Negotiable Instruments Act made by the Respondent/Accused and came to a conclusion that the

Appellant/Complainant had not established his case through an independent witness or through his Bank Account found him them guilty under Section 138 of the Negotiable Instruments Act and acquitted under Section 255(1) Cr.P.C.

3.Questioning the Judgment of Acquittal dated 05.02.2016 passed by the trial Court, the Appellant/Complainant has preferred the present Appeal before this Court by taking a plea that in the instant case, the Respondent/Accused had admitted his signature in the cheque and in fact, the onus is on the Respondent/Accused, but rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 the Learned Counsel for the Appellant urges before this Court that the 2nd Respondent/A2 had obtained a hand loan of Rs.2,50,000/- from the Appellant/Complainant for which no pronote was taken by the Appellant but these facts were not borne in mind by the trial Court at the time of passing the impugned Judgment.

4.It is represented on behalf of the Appellant that there is no explanation on the part of the Respondent/Accused as to how he had rebutted the presumption and in the case on hand the Respondent/ Accused had not rebutted the presumption beyond reasonable doubt.

5.The Learned Counsel for the Appellant strenuously takes a plea that the Appellant/Complainant had deposed in his evidence that he was carrying on agricultural activity in his own land and doing mechanical business and therefore, he had sufficient income to lend money to the Respondent/Accused. Unfortunately, the trial Court had failed to look into this aspect in a proper perspective.

6.The Learned Counsel for the Appellant brings it to the notice of this Court that D.W.1 to D.W.3 [alleged to be Broker, Accountant and Manager of the 1st Respondent/A1 Mill] had not produced a single piece of document to show that they were really employed in the Mill. Furthermore, D.W.1 (in his cross examination) had stated that he would not aware of the Bank Accounts, property details of the 2nd Respondent/A2 and if that be the case, D.W.1 could not say that there was no necessity for the 2nd Respondent/A2 to obtain a hand loan.

7.The Learned Counsel for the Appellant contends that the trial Court had ignored an important fact that for what purpose the cheque came into the hands of the Appellant/Complainant.

8.The Learned Counsel for the Appellant takes a plea that the Accused had not issued a reply to Ex.P4 - Lawyer's Notice and in the absence of any reply furnished by the

Respondent/Accused to Ex.P4, the version of the Appellant/Complainant merits acceptance in Law, which fact was not considered by the trial Court in a realistic manner.

9.The Learned Counsel for the Appellant/Complainant relies on the decision of the Hon'ble Supreme Court in Rangappa V. Sri Mohan reported in 2010 (2) MWN (Cr.) DCC 5 (SC) at special page 13 & 14, wherein, at paragraph 15, it is, among other things, observed as under:

"15. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

10.He also seeks in aid of the Judgment of this Court in CrI.A.No.552 of 2001 dated 26.06.2007 (between Mani V. A.Jaganathan), wherein at paragraphs 11 & 11(a), it is observed as under:

"11.The Point: Relying on the ratio in 1998 CrI.L.J. 906 (A.Bhoosanrao Vs.

Prushothamdas Pantani and another), the learned trial judge has held that when the complainant says that he had lent huge amount by way of cheque, which was denied by the accused, the burden is on the complainant to prove that he had sufficient capacity to lend the said amount that too by cheque. The facts of the above said case is as follows:

"The complainant in that case has preferred a complaint under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instruments Act alleging that the cheque amount was paid by the complainant to the accused from out of his salary and that there was no account maintained by him and he is not an income-tax assessee. To show that he had sufficient capacity to lend the said amount, the complainant in the witness box would say that he had earned lakhs of rupees through real estate business every year. But he has not filed any income-tax return to substantiate this claim. Only under such circumstance, the Court held that the complainant had failed to prove satisfactorily that he has sufficient capacity to lend the amount of Rs.1,25,000/-. Apart from this ground, the Court had dismissed the complaint on the other ground that in the cheque-Ex.P.2 the entire body of the letter was typed but the sum of Rs.1,25,000/- was written both in figures and words in ink, which was also not properly explained by the complainant under what circumstance Ex.P.2-impugned cheque was partially typed and the amount only written in hand writing with ink."

But that is not the case herein. P.W.1 in his evidence would depose that the accused had borrowed money from him on several occasions and only to discharge the liability of Rs.5,00,000/- which was the amount due to him on the date of drawal of the impugned cheque i.e., on 11.2.2000, the accused had drawn Ex.P.1-cheque in favour of him. He would admit in the chief-examination itself that the accused is the owner of Murugan Lodge at Udhagamandalam and that he is indulged in cine field and to meet cinema shooting

expenses the accused used to borrow money from him on several occasions. According to him, about 20 persons were employed under him in his land and doing agriculture and that the accused came to his house on 11.2.2000 and after receiving the loan amount, had drawn Ex.P.1-cheque in favour of him.

11(a) The defence taken by the accused in this case is that the impugned cheque-Ex.P.1 belongs to his brother D.W.4 and the same was stolen away from him and that with the stolen cheque the accused has forged the same and filed this complaint. D.W.4, the brother of the accused, would depose that the complainant had worked under him for nearly 3 years and during that period he had lost one cheque leaf. But in the cross-examination he would admit that he has not preferred any complaint with the police regarding the loss of the cheque and he has further admitted that he has also not informed about the loss of the cheque leaf to the Bank concerned. Further he has also not produced any documentary evidence to show that the complainant had worked under him for nearly three years. It is not the case of the accused in defence that his signature has been forged in Ex.P.1-cheque. On the other hand even after the receipt of the original of Ex.P.4-notice under Ex.P.5-acknowledgment, the accused has not chosen to send any reply denying the averments contained in the original of Ex.P.4-notice. Under such circumstances, it is to be presumed that the fact that Ex.P.1-impugned cheque for Rs.5,00,000/- was drawn by the accused in favour of the complaint has been proved and from the evidence of P.W.2 & P.W.3 it has been proved that on presentation of the said cheque with the bank the same was returned or dishonoured with an endorsement that there is no sufficient funds in the account of the accused. The presumption under Section 118 and 139 of the Negotiable Instruments Act is that only for a valuable consideration the impugned cheque Ex.P.1 was drawn by the accused in favour of the complainant. Hence, I am of the view that the findings of the

learned trial Judge that the complainant has failed to prove that he had sufficient funds to lend loan amount to the accused and that the offence under [Section 138](#) of the Negotiable Instruments Act was not attracted against the accused cannot be sustainable."

11.Also, the Learned Counsel for the Appellant relies on the decision in Yavatmal District Mahesh Urban Credit Co-op., Society Ltd., Yavatmal v. Narayanrao Ukandra Paikrao, Yavatmal District, reported in 2011 SCC OnLine Bom 630 : (2012) 1 MWN (Cri) DCC 149, wherein at paragraph 7, it is, inter alia, observed as under:

"7. The accused in the course of his evidence before the learned trial Magistrate did not examine any witness or witnesses in order to rebut the statutory presumptions which were in favour of the complainant. In such a case when a cheque is received by a holder it is obligatory for the Court to presume that it is a cheque of the nature referred to in [section 138](#) received for the discharging of legally enforceable debt or liability. Until contrary evidence is led by the accused, the presumption can live and survive. Although the accused need not prove his defence beyond reasonable doubt as is expected from the complainant in a criminal trial to prove the offence but the accused must certainly adduce the evidence enough on preponderance of probabilities to prove that there was no such debt or liability to be discharged by him on the date of issuance of the cheque. That was not done by the accused in this case. That being so, the learned trial Magistrate was clearly in error of law to acquit the accused because requirements of [Section 138](#) of the N.I.Act were sufficiently established beyond reasonable doubt and, therefore, acquittal order was unreasonable, contrary to the record and presumptions of law in the facts and circumstances of the case. The accused had issued the cheque in the sum of Rs.1,40,000/- bearing No. 282142 on 20.4.2007 which was presented before the Washim Urban Cooperative Bank Limited, Washim on 23.4.2007. The cheque was returned

dishonoured by non-payment from the drawer Bank Yavatmal Madhyawati Sahakari Bank, Yavatmal with intimation from the banker "funds insufficient" in the account of the accused. The amount remained unpaid despite notice dated 14.5.2007 issued within a period of thirty days from the date of intimation received from the Banker for non-payment. That being so, and furthermore when the accused did not bother to reply the demand notice sent from the complainant, the requirements of Section 138 of the N I Act were clearly established against the accused. No satisfactory evidence was adduced on behalf of the accused to overturn the effect of statutory presumptions against him. The offence punishable under section 138 of the N I Act was proved beyond reasonable doubt against the accused. Hence, acquittal order was wrong. The Appellate Court has power to review, re-appreciate and reconsider the evidence upon which the order was acquittal was founded. The interference with the wrong acquittal order is always necessary to prevent miscarriage of justice."

12.The Learned Counsel for the Appellant brings it to the notice of this Court that the decision of the Hon'ble Supreme Court in P.Venugopal V. Madan P.Sarathi reported in (2009) 1 Supreme Court Cases 492, at special page 496, wherein at paragraphs 14 to 17, it is observed and held as follows:

"14.Indisputably, in view of the decisions of this Court in Krishna Janardhan Bhat (supra), the initial burden was on the complainant. The presumption raised in favour of the holder of the cheque must be kept confined to the matters covered thereby. The presumption raised does not extend to the extent that the cheque was issued for the discharge of any debt or liability which is required to be proved by the complainant. In a case of this nature, however, it is essentially a question of fact.

15.The complainant contended that he gave a loan of Rs. 1,20,000/- to the appellant. He denied and disputed the said fact. Both parties adduced their respective evidences.

16.All the three Courts below have arrived at a concurrent finding that the complainant has been able to prove his case of grant of a loan. Admittedly the burden of proof shifted to the appellant. Again a finding of fact was arrived at that the appellant had failed to discharge his burden.

17.In the aforementioned situation, we are of the opinion that the finding of fact arrived at by the Courts below cannot be said to be such which warrants interference by us. So far as the question of service of notice in terms of the proviso appended to [Section 138](#) of the Act is concerned, again the same is essentially a question of fact. If the evidence of PW-2 has been believed by the learned Trial Judge as also by the Appellate Court and the revisional Court, we in exercise of our jurisdiction under [Article 136](#) of the Constitution of India should not interfere therewith."

13.In response, the Learned Counsel for the Respondents 1 and 2/A1 & A2 submits that P.W.1 (Appellant/Complainant), in his evidence, had clearly deposed that the 2nd Respondent/A2 is not his friend and that he had not gone to the 1st Respondent/A1's Mill and further that, he does not know about the family details of the 2nd Respondent/A2 etc.

14.The Learned Counsel for the Respondents 1 and 2/A1 & A2 contends that the Appellant/Complainant's Brother-in-Law (Ganesan) had foisted a case upon the Accused and on earlier occasion, in S.T.C.No.315/2012 on the file of the trial Court, the Appellant/ Complainant's Brother-in-Law filed a case against the Accused.

15.The Learned Counsel for the Respondents refers to the evidence of P.W.1 (Appellant/Complainant) and projects an argument that the Appellant/Complainant had not demanded any interest for the purported loan received by the Accused and although P.W.1 had deposed that his annual income was approximately Rs.1 to 1 ½ lakhs, he be admitted in his evidence that it was correct to state that he was not well placed to advance an interest free loan.

16.In short, it is the clear-cut version of the Respondents/A1 & A2 that there was no transaction between the Appellant/Complainant and the Respondents/Accused and in fact, in the instant case, P.W.1 (Appellant/Complainant) had not

established his case before the trial Court and that the trial Court had rightly found the Accused not guilty under Section 138 of the Negotiable Instruments Act and acquitted them, which may not be set aside by this Court, sitting in Appellate Jurisdiction.

17. At this stage, on perusal of the Complaint in S.T.C.No.314 of 2012 (filed by the Appellant/Complainant) before the trial Court, this Court finds, at paragraphs 4 to 6, the following averments:

"4. That on 3.5.2009, the 2nd accused on behalf of 1st accused company approached the complainant and borrowed a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty thousand only) from the complainant for the 1st accused company business necessities and to discharge the above said legally enforceable debt the 2nd accused for the 1st accused have issued the cheque to the complainant bearing No.421393 dated 3.6.2009 of Corporation Bank, Coimbatore Branch, drawn by the 2nd accused for Rs.2,50,000/- in favour of the complainant.

5. To encash the cheque, the complainant presented the cheque for collection through his account in City Union Bank, Tiruchengode on 3.6.2009, the said cheque was returned to the complainant unpaid as 'Exceeds arrangement' on 5.6.2009. Again on the request of the 2nd accused, the complainant presented the cheque for collection through his account in City Union Bank, Tiruchengode, the said cheque was returned to the complainant unpaid as 'Payment stopped by Drawer' on 17.11.2009.

6. Hence the complainant issued a legal notice to the accused on 30.11.2009 by demanding the accused to settle the cheque amount within 15 days from the date of receipt of the legal notice. The accused received the legal notice on 5.12.2009. After receipt of the notice, the accused neither paid the amount nor replied. The statutory grace time of 15 days given in the notice expired on 19.12.2009. Hence this complaint.

18. It is the case of the Appellant/Complainant that the Respondents/Accused had not issued a Reply to Ex.P.4 - Appellant's Lawyer's Notice dated 30.11.2009 and because of the

failure of the Respondents to pay the cheque amount within 15 days statutory time mentioned in the notice, the Appellant/Complainant was forced to prefer the Complaint before the trial Court.

19. Before the trial Court, the 2nd Respondent/A2 was not examined as a witness on the side of the 'Defence'. However, on the side of the Respondents/Accused, D.W.1 to D.W.3 were examined.

20. It is the evidence of D.W.1 that he performs the job of 'Thread Agent' for the 1st Respondent's Mill and other Mills for the past 15 years and that he knows the Appellant/Complainant and it was not the habit to obtain loan from outsider for the purpose of 1st Respondent's Company by the 2nd Respondent/Accused.

21. D.W.1, in his cross examination, had deposed that he is a 'Thread Broker' and the 2nd Respondent is not his Master and that he does not know about the capital investment of his MD, Bank Income and Expenditure Account and about his income etc.

22. D.W.2 (Accountant of the 1st Respondent Company), in his evidence, had deposed that the Accounts of the 1st Respondent/Company - Ex.D1 relates to the accounts for the period from 01.04.2009 to 31.03.2010 and there was no indication that on 30.10.2009 for the 1st Respondent's Mill towards supply of thread, an advance amount was paid to Ganesan. Further, there was no entry on 03.05.2009 that the Appellant/Complainant had advanced a loan of Rs.2,50,000/- to the Mill and further that, the 2nd Respondent/A2 was not in the habit of obtaining loan from outsider's for and on behalf of the Mill.

23. D.W.3 (Manager of the 1st Respondent/Company), in his evidence, had deposed to a suggestion that 'on 03.05.2009 the Appellant/Complainant gave loan of Rs.2,50,000/- and the same was entered', had answered that no such loan was obtained and that an advance sum of Rs.2,50,000/- was not obtained on 30.10.2009 towards supply of thread and they came to know about the cheque only during 2009 from the Bank when a cheque for Rs.2,50,000/- came for collection and immediately, when they examined the files of the 1st Respondent/Company, they came to know that the case cheque and 12 other cheques were missing and that the missing/lost cheques were obtained two, three years before the year 2009 from the Bank and immediately they gave a complaint from the Police on 27.10.2009 and Ex.D2 was the receipt issued by the Police.

24. P.W.1 (Appellant/Complainant), in his evidence, had deposed that the 2nd Respondent/A2 is the Managing Director of the 1st Respondent/A1 Mill and that the 2nd Respondent/A2 on 03.05.2009 had obtained a loan of Rs.2,50,000/- for his 'Thread Business' and while repaying the said amount, issued a cheque

dated 03.06.2009 (Ex.P1) for Rs.2,50,000/- in favour of him by filling up the same and when he deposited the said cheque with his Banker at City Union Bank, Tiruchengode on 03.06.2009, the cheque got returned and that on the request of the 2nd Respondent/A2, again he deposited the cheque on 17.11.2009 with his Banker and that he issued Ex.P4 - Lawyer's Notice dated 30.11.2009 to the Respondents/A1 & A2 inter alia stating that '... the cheque got returned unpaid as 'Payment Stopped by Drawer' on 17.11.2009'.

25.A perusal of Ex.P.2 - Return Memo dated 05.06.2009 of the Corporation Bank Coimbatore Branch shows that at Serial No.2, the reason for return was mentioned as 'Exceeds Arrangement' and that the amount was mentioned as 'Rs.2,50,000/-'. Again, in Ex.P.3 - Return Memo dated 17.11.2009, the reason for returning was mentioned at Serial No.6 'Payment Stopped by Drawer'.

26.In so far as the instant case is concerned, the evidence of P.W.1 (Appellant/Complainant) is that he had lent money because of the reason that the 2nd Respondent was carrying on business by running the Mill and further that, he had stated that it was correct to state that Ex.P1 - Cheque, his name, date, one signature was seen in one ink. But, in the amount was written both in numerical and in writings with a different ink. Moreover, it is the evidence of P.W.1 (in cross examination) that his name whether it was written in Ex.P1 - Cheque by the 2nd Respondent/A2, the same ought to be asked with him. Besides the above, it is the evidence of P.W.1 that the 2nd Respondent/A2 was supplying Thread to the shops of Valarmathi and one Ganesan (Complainant in S.T.C.No.315/2012).

27.It is to be noted that Section 118 of the Negotiable Instruments Act, 1881 is mandatory in nature, though it deals with a 'Presumption'. In fact, the presumption under Section 118 of the Negotiable Instruments Act is a rebuttable one and that the Respondent/Debtor could press into service the facts and circumstances of the cases disclosed by a Plaintiff/Petitioner's evidence.

28.It is to be remembered that only when the due execution is established, the presumption under Section 118(a) of the Negotiable Instruments Act could be raised. However, if the fact of execution itself is in dispute the Petitioner/Plaintiff has to prove not only the Execution, but also the Passing of Consideration. It cannot be gainsaid that a statutory presumption continues until it is rebutted and the only way it can be rebutted is by establishing the contrary fact that the Negotiable Instrument was issued without consideration.

29.As a matter of fact, the Negotiable Instruments Act does not define the word 'Dishonour'. However, the title of Section 138 of the Negotiable Instruments Act lists the insufficiency of funds as being one of the situations that could contribute to dishonour and inevitably the most important one. Every debt or a liability upon which a cheque was issued was not enforceable, as opined by this Court.

30.No wonder, the strict liability under Section 138 of the Negotiable Instruments Act can be enforced only when the cheque was issued in discharge of any legal enforceable debt or other liability partly or wholly. A onus lies on the Complainant to establish that the cheque was signed by the Drawer in discharge of a 'Legally Enforceable Debt'. A presumption under Section 118 (a) of the Negotiable Instruments Act is against the 'Maker' or 'Drawer' or 'Endorser' and not a presumption specially in favour of the 'Payee', the 'Holder' or the 'Holder in Due Course'.

31.However, the presumption under Section 118 of the Negotiable Instruments Act is rebuttable by evidence of an executant on his intention and circumstances of the case. Ordinarily, the presumption under Section 118 of the Negotiable Instruments Act is that the cheque was made for consideration.

32.Also, the offence under Section 138 is not a regular, grievous crime like murder or simple injury or grievous injury case. After all, an offence is created by a legal fiction in the Statute and to put it precisely, it is a civil liability clothed in a criminal colour under restricted conditions by means of an amendment to the Act which is brought into force in the year 1989, in the considered opinion of this Court. Furthermore, the offence under Section 138 of the Act does not involve a moral turpitude.

33.It cannot be forgotten that the object of bringing Section 138 of the Negotiable Instruments Act in the Statute Book is to inculcate a faith in the efficacy of banking operations and credibility in transacting 'Business on Negotiable Instruments'. At best, the 'Dishonour of Cheque' is a 'Regulatory' offence/civil liability which has been created to serve the public in ensuring a reliability of the instrument.

34.It is to be noted that the legal position is that only when the Complainant discharges his burden that the cheque was issued by the Respondent/Accused towards the discharge of a legally enforceable whole or part of a debt or liability as the case may be, then, only the Respondent/Accused ordinarily will be called upon to answer his case. However, if the Complainant by means of his own evidence, tacit admissions etc. is not able

to establish his case to the subjective satisfaction of the trial Court concerned, then, he must fail. In this regard, this Court points out that under our Constitutional Scheme of things an Accused is entitled to maintain silence and he need not enter into the witness box.

35. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in M/s. Electronics Trade & Technology Development Corporation Limited Secunderabad V. M/s. Indian Technologists & Engineers (Electronics) Private Limited and another, reported in AIR 1996 Supreme Court 2339 at special page 2340, wherein at paragraph 7, it is, among other things, observed as follows:

"7. ... Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the Bank for payment and when it is returned on instructions, Section 138 does not get attracted. Under these circumstances, since the accused has not made the payment within 15 days from the date of the receipt of the notice issued by the payee or the holder in due course, the dishonest intention is inferable from those facts. Accordingly, the ingredients as contained in Section 138 have been prima facie made out in the complaint. The High Court, therefore, was wholly incorrect in its conclusion that the ingredients have not been made out in the complaint. The orders of the High Court quashing the complaints are illegal. They are accordingly set aside and the trial Court is directed to dispose of the matters as expeditiously as possible. It is made clear that we do not intend to express any opinion on merits."

36. In so far as the case of 'Dishonour of a Cheque' issued by a Company is concerned, generally, the 'Drawee' is expected only to know who are in-charge of the affairs of the Company. It is not reasonably expected of him to know whether the individual who signed the cheque was instructed to do so or whether he was deprived of his such authority. In fact, these matters are peculiarly within the knowledge of the Company and those in-charge of it and it is for them to establish the same, as per decision N.Rangachari V. Bharat Sanchar Nigam Limited, reported in AIR 2007 SC 1682.

37.A reading of Section 106 of the Indian Evidence Act indicates that the said Section ought to be confined to those cases where a fact is specially within the knowledge of any individual. But when the matter is within the knowledge of the Defendant, he is to establish the same, as per decision Madamanchi Gouindayya V. Madamanchi Chimpiramma reported in (1966) 1 An WR 227.

38.The principle underline Section 106 [being an exception to the General Rule relating to burden of proof] applies only to such matters of defence which are/were supposed to be specially within the knowledge of an appreciation it would not apply when the fact is such that it is capable of being known by others also (other than the party).

39.More specifically, it is the burden of the Complainant to establish that the cheque was signed by a 'Drawer' in discharge of a 'Legally Enforceable Debt'.

40.At the risk of repetition, this Court points out that in the present case, the Appellant/Complainant had come out with a case before the trial Court on 03.05.2009 that the 2nd Respondent/A2 on behalf of the 1st Respondent/A1 Mill approached him and borrowed a sum of Rs.2,50,000/- for 1st Respondent/A1 Company business necessities and to discharge the aforesaid Legally Enforceable Debt, the 2nd Respondent/A2 for the 1st Respondent/A1 had issued the cheque to the Complainant dated 03.06.2009 drawn by the 2nd Respondent/A2 for Rs.2,50,000/- in his favour. However, P.W.1 (Appellant/Complainant) before the trial Court had deposed (in his cross examination) that the 2nd Respondent/A2 is not his relative and that he is not doing any finance business and also that the 2nd Respondent/A2 is not his friend and prior to this, there was no income and expenditure written transaction between him and the 2nd Respondent/A2.

41.More importantly, P.W.1 (Appellant/Complainant), in his evidence, had deposed that 'he had not gone to the 1st Respondent/A1 Mill till date and that he does not know about the details of the 2nd Respondent/A2 etc. and in fact, P.W.1, in his evidence, had stated that he is doing mechanical job and in his cross examination, he had stated that apart from agriculture, he has no business. As a matter of fact, when such is the background of the P.W.1 (Appellant/Complainant), it passes beyond one's comprehension as to how he had the wherewithal to mobilise resources to lend a sum of Rs.2,50,000/- to the Respondents/A1 & A2. Furthermore, for the receipt of annual income of Rs.1 to 1 ½ lakhs, P.W.1 (Appellant/Complainant) had not produced any documentary evidence before the trial Court in

the case.

42.Although in the instance case, the 2nd Respondent/A2 had not entered into the witness box before the trial Court to let in evidence on behalf of the Respondents/Accused, they heavily relied on the inconsistencies/contradictions/discrepancies/variance of the Appellant/ Complainant's case. In fact, they came out with a defence before the trial Court that the 2nd Respondent/A2 had transaction with the Brother-in-Law of the Appellant/Complainant and in fact, there was no transaction between the Appellant/Complainant and the Respondents/ Accused. Also, when P.W.1 had stated in his evidence that he did not know the Accused, then, a simmering doubt is raised about the case of the Appellant/Complainant that he had advanced a sum of Rs.2,50,000/- to the Respondents/Accused. In short, in the present case, on behalf of the Respondents/Accused, they had raised probable defences to shatter or dislodge the case of the Appellant/Complainant. Viewed in that perspective and looking at from any angle, the conclusion arrived at by the trial Court that the Appellant/Complainant had failed to establish his case against the Respondents/Accused and resultantly, the finding of not guilty and their consequent acquittal do not suffer from any material irregularities or patent illegalities in the eye of Law. Consequently, the Criminal Appeal fails.

43.In fine, the Criminal Appeal is dismissed. The Judgment of the trial Court in S.T.C.No.314 of 2012 dated 30.12.2015 is affirmed by this Court for the reasons assigned by this Court in this Appeal.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Sg1

WEB COPY

To

1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Tiruchengode.

2.The Section Officer,
Records Section,
High Court, Madras.

3.The Judicial Magistrate,
Tiruchengode.

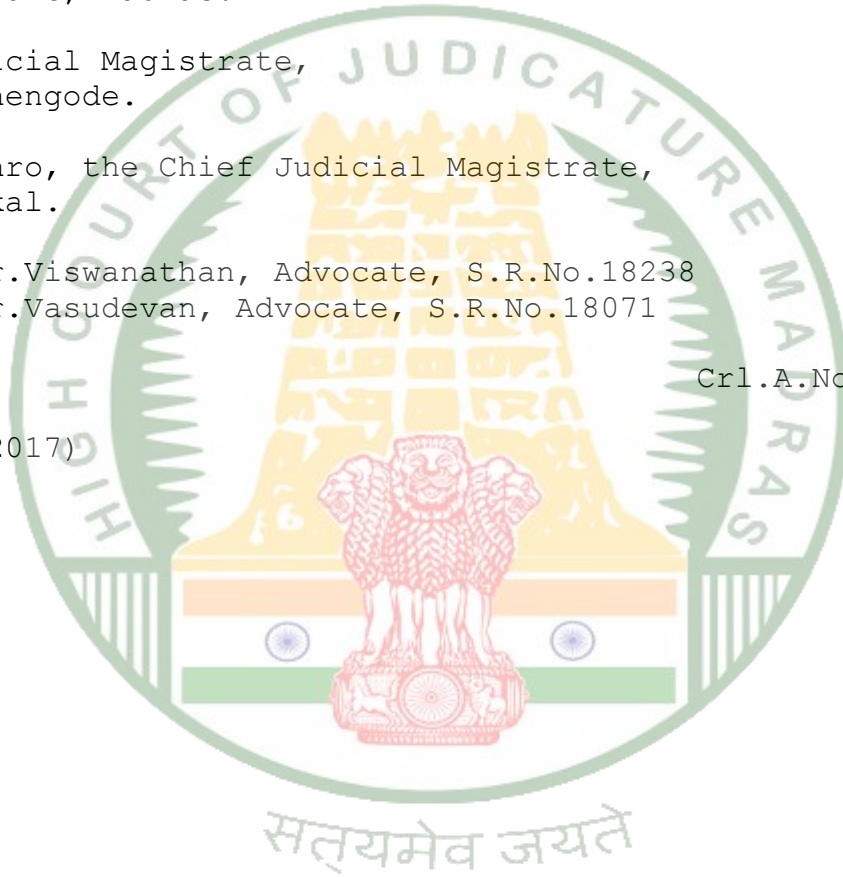
4. -do- Thro, the Chief Judicial Magistrate,
Namakkal.

+1cc to Mr.Viswanathan, Advocate, S.R.No.18238

+1cc to Mr.Vasudevan, Advocate, S.R.No.18071

Crl.A.No.22 of 2016

RJ (CO)
RS (04/04/2017)



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