IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

Crl.A.No.264 of 2016

N.Nachimuthu [PETITIONER]

Vs

K.S.Ramasamy [RESPONDENT]

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code to set aside the order of acquittal dated 04.01.2016 made in S.T.C.No.484 of 2012 on the file of the learned Judicial Magistrate/Fast Track Court No.1, Erode, by allowing this Criminal Appeal.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.I.C.Vasudevan

JUDGEMENT

The appellant is the complainant in S.T.C.No.484 of 2012 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode. He has filed the complaint for the offence under Section 138 of Negotiable Instruments Act. The complainant alleged that the respondent herein has borrowed a sum of Rs.15,00,000/- from him on 04.06.2012 and issued a post dated (04.07.2012) cheque and when the cheque was presented for collection on 04.07.2012, it was dishonoured with the remarks " insufficient funds". After serving legal notice to the respondent calling upon him to make payment, he has filed the complaint. In support of the case of the complainant, he examined himself as Pw1 and marked 3 documents. The respondent examined one witness as Dw1 and examined himself as Dw2 and marked 5 documents.

2. Before Trial Court, the respondent has taken a plea that the petitioner was a money lender and he had borrowed a sum of Rs.20,36,000/- since 2010, and repaid Rs.16,39,000/- in 28 installments and he paid Rs.60,000/- on 08.10.2011 and requested 4 months time for settling the balance amount. At that time, he handed over three unfilled cheques to the complainant. Apart from that, he paid a sum of Rs.5,00,000/- on 17.05.2012 to the complainant as interest and subsequently, he paid the entire due amount to the complainant and when he asked for return of the cheques, the complainant demanded another Rs.10 Lakhs and thereafter, he has filed the present complaint by misusing one of the cheques. It is also the case of the respondent is that of the three cheques, one cheque was misused and a compliant was filed in the name of one Shanmugam at Thiruchengodu and the third cheque was misused and a complaint was filed in the name of one Azhagesan at Erode. The complainant has produced the statement of accounts. The Trial Court accepted the defense of the respondent and the respondent was acquitted on the ground that the complainant failed to prove his case beyond reasonable doubt. Challenging the order of acquittal, this Criminal Appeal has been filed.

3. The learned counsel appearing for the appellant would submit that the Trial Court has committed error in simply accepted the defense version. It is seen that the Trial Court has not taken into account the presumption, raised against the accused, in terms of Section 139 of Negotiable Instruments Act. According to him, the respondent has not discharged his onus.

4. The learned counsel appearing for the respondent would submit that the Trial Court has rightly acquitted the accused, placing reliance on the materials available on record. He has also pointed out that, in his evidence, the complainant as Pw1, admitted that he has received the cheques; he used to lend money by receiving cheques, and during the period of 4-5 years, he has received 13 cheques. According to the learned counsel for the respondent, the Trial Court has come to the conclusion that the presumption has been rebutted.

5. I have perused the materials on record. It is not in dispute that the cheque in question belongs to the respondent and it bears his signature. Therefore, it can be presumed that the cheque was issued for the discharge of the legally enforceable debt. The presumption is rebuttable in nature. It is to be seen in the case at hand whether the respondent has

discharged his onus in order to rebut the said presumption. It has been held by the Honourable Supreme Court of India that the onus of proof on accused is not heavy as that of the prosecution and for rebutting the s**aid presumption, what it need is to raise a probable defence.** The stand of proof is preponderance of probabilities vide ***M.S.Narayana Menon Alias Mani Vs. State of Kerala and another (2006) 6 SCC 39.***

6. The respondent as Rw1, has given evidence that he has handed over the three unfilled signed cheques to the complainant and one of the cheques was misused by this complaint and the other two cheques were misused and complaints (Ex.D3 and Ex.D5) were filed in the name of two other persons namely Shanmugam and Alagesan. It is not in dispute that there were several transactions between the accused and the appellant, as could be seen from the evidence of Pw1. The complainant as pw1, has admitted that he had received three cheques, drawn on Union Bank from the respondent. The Trial Court relied on the judgment of the Honourable Supreme Court of India in John K.Abraham /vs/ Simon C.Abraham and another reported in 2014(2) Supreme Court Cases 236, wherein it is held as follows:-

> " .... (i) that he had the requisite funds for advancing the sum of money/loan in question to accused, (ii)that the issuance of cheque by accused in support of repayment of money advanced was true, and (iii) that the accused was bound to make payment as had been agreed while issuing

cheque in favour of complainant."

7. In the light of the admission made by PW1 that he has received three cheques from the respondent, it can be safely concluded that the respondent has raised a probable defence and discharged the onus by preponderance of probability. Once the onus of respondent is discharged, it is for the complainant to prove his case that he lent a sum of Rs.15,00,000/- to the accused. In the case at hand, admittedly, except the disputed cheque Ex.P1, there is no other document to show that the plaintiff lent Rs.15,00,000/- on 04.06.2012. The mere interested oral testimony of the complainant is not sufficient to hold that he lent Rs.15,00,000/- on 04.06.2012. It is impossible to believe that the complainant advanced a sum of Rs.15,00,000/-, on mere asking, without keeping any documentary proof.

8. The Hon'ble Supreme Court in ***KRISHNA JANARDHAN BHAT vs. DATTATRAYA G. HEGDE [(2008) 4 SCC 54]*** has held that 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. Under these circumstances, it can be safely concluded that the complainant has not proved that the cheques in question were issued for the discharge of legally enforceable debt. The appellant has not proved his case for an offence under Section 138 of the Negotiable Instruments Act.

9. It is not the case of the appellant that the Trial Court has

omitted to consider any evidence on record. The Trial Court has discussed all the aspects of the case and came to its own conclusion, as per evidence on record. Having gone through the entire materials on record, it is difficult for this court to find fault with the appraisal of evidence by the Trial Court. There is no ground to interfere with the judgment of the Trial Court.

10. In the result, the Criminal Appeal is dismissed and the judgement of acquittal passed by the Judicial Magistrate, Fast Track Court No.1, Erode in S.T. C.No.484 of 2012 on 04.01.2016 is hereby confirmed.

09.08.2017

Index : Yes/No

Internet : Yes

mst

To

1. The Judicial Magistrate,
   Fast Track Court No.I,
   Erode.

N.AUTHINATHAN, J.

mst

CRL.A.No.264 of 2016

09.08.2017