

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CRL.A.No.409 of 2016

T.Yellappa

... Appellant/Complainant

.vs.

M.Nagarajan

... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C., to set aside the judgment and order of acquittal dated 29.01.2016 passed in S.T.C.No.34 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Hosur.

For Petitioner : Mr.Sharath Chander for
M/s V.Raghavachari

For Respondent : Mr.J.Hariharan for
M/s V.Nicholas

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Judgment

The complainant in S.T.C.No.34 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Hosur is the appellant herein and the appeal has been preferred against the order of acquittal. The case of the complainant is that the respondent herein borrowed Rs.6,00,000/- on 28.03.2013 from him, promising to repay the same at the earliest and on the same day, he handed over a post dated cheque i.e. 21.11.2014, drawn on ICICI Bank, Hosur branch for Rs.6,00,000/-. When the cheque was presented for encashment, it was dishonored with an endorsement "funds insufficient". A legal notice was issued by the complainant to the respondent, informing about the dishonored cheque and calling upon him to repay the amount. The respondent did not respond the notice.

2. At the trial, the respondent has taken a plea that he is also a vegetable vendor; that he used to procure vegetables from the vegetable shop run by the complainant and his brother on credit basis; that in the course of business transaction, cheques were given to the complainant as security; that the amount payable towards purchase of vegetables has already been paid; that the cheque in question was handed over in blank form, 4 or 5 years, prior to the complaint and that the cheque was misused and the present complaint has been filed. During trial, the complainant examined himself as Pw1 and marked 9 documents. The respondent

examined himself as Rw1 and two more witnesses as Rw2 and Rw3 and marked 4 documents. After full trial, the Trial Court acquitted the respondent/accused holding that the complainant has failed to prove his case. Aggrieved by the order of acquittal, the complainant has preferred this appeal.

3. The learned counsel appearing for the appellant would submit that the Trial Court wrongly placed the burden of proof on the complainant and that the order of Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondent would submit that the Trial Court was justified in acquitting the accused. According to him, the presumptions drawn in favour of the complainant had been rebutted and that therefore the complainant has failed to prove his case.

5. It is seen from the evidence of Pw1 that he was a whole sale vegetable merchant and the respondent used to procure vegetables from his shop. It is an admitted fact that the cheque in question belongs to the respondent and it bears his signature. The learned counsel for the appellant relied upon a judgment *in Rangappa vs. Sri Mohan reported in (2010) 11 SCC 441*, wherein it has been held thus:-

"... it is settled position that when an accused has to rebut the presumption under Section 139, the standard of proof

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."

He has also relied upon a judgment of *High Court of Madras in W.B.T.Prakash vs. Elangovan delivered in Crl.A.No.745 of 2005 dated 10.03.2015*. In the light of the above decisions, it can be presumed that the cheque was issued for the discharge of legally enforceable debt, under Section 139 of Negotiable Instruments Act. Therefore, it is for the respondent to rebut the presumptions drawn against him.

6. Admittedly, the cheque was dishonored. The complainant issued notice calling upon the respondent to repay the amount. The respondent did not respond to the notice. When examined under Section 313 of Criminal Procedure Code, the respondent would state that he never borrowed money from the complainant, that he is also vegetable vendor, that he used to procure vegetables from the complainant's shop, that in the course of business transaction, he handed over blank cheque as security.

7. The respondent as Dw1 has also given evidence that he had handed over a blank cheque as security in the course of business transaction. He would further assert that he has not borrowed any money from the complainant. Dw2 (Selvam) is brother of the complainant and he gave evidence in support of the respondent. He would state that during December 2012, the respondent paid Rs.1,40,000/- to the complainant and ask for return of the cheque.

8. The learned counsel appearing for the appellant would submit that the respondent has taken a plea that the cheque was handed over, 4 or 5 years, prior to the complaint. But, in his evidence, has stated that the cheque was handed over in the year 2012. Dw2 has stated that the amount payable to the complainant was discharged during December 2012. According to him, the respondent took different stands and that therefore, his defence that the cheque was handed over in blank form in the normal course of business transaction, is liable to be rejected. However, the court must examine the cumulative effect of the evidence on record.

9. In order to rebut the presumption, it is open to the respondent to rely on the materials placed by the complainant. The definite case of the complainant is that the respondent has borrowed Rs.6,00,000/- from him on 23.08.2013. The cheque is dated 21.11.2014 and it is for Rs.6,00,000/-. It is very difficult to believe that the complainant lent such a huge amount of Rs.6,00,000/-,

without any agreement for payment of interest.

10. The learned counsel appearing for the complainant pointed out that as per Ex.P9, Statement of accounts, the complainant has sufficient funds in his account and he has withdrawn Rs.3,00,000/- on 28.03.2013. However, the complainant in his evidence has admitted that he is an income tax assessee and in his accounts he has shown the loan in question and has assured to produce the account. However, he has not chosen to produce his income tax return and accounts to show that he has actually lent Rs.6,00,000/- to the respondent. It is not the case of the complainant that the accused was liable to pay any amount, other than the amount covered by the cheque.

11. The complainant in his evidence would admit that he has gone to the respondent's shop to hand over the money. It is also his evidence that nobody was present at the time of demand of loan and at the time of giving money to the respondent. The complainant in his evidence would further admit that the cheque was handed over to him, 5 or 6 months after the date of loan. However, he did not charge any interest. The cheque is for actual loan amount. The complainant was cross examined on 5.11.2015. In his evidence, he has admitted that the respondent stopped buying vegetables from him, 6 years, prior to his deposition. However, he claimed that he had lent money on 28.03.2013, without obtaining any contemporaneous document in proof of the alleged loan. All these circumstances are sufficient to hold that the respondent has rebutted the presumptions drawn against

him.

12. As the respondent has rebutted the presumptions drawn under Section 138 and 139 of Negotiable Instruments Act, the onus shifts on to the complainant to prove that he actually lent Rs.6,00,000/- to the respondent. Except the disputed cheque and the interested oral testimony of the complainant, there is no reliable material to show that he has lent Rs.6,00,000/-. As already pointed out, he has not produced best evidence available with him. Therefore, adverse inference has to be drawn against the complainant. The Trial Court on the basis of the materials, has taken a reasonable view. It has considered the evidence on record. I do not find any reason to hold a different view. The appeal is liable to be dismissed.

13. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the learned Judicial Magistrate, Hosur in S.T.C.No.34 of 2015 on 29.01.2016 is hereby confirmed.

28.08.2017

Index : Yes/No
Internet : Yes

Speaking order/Non speaking order

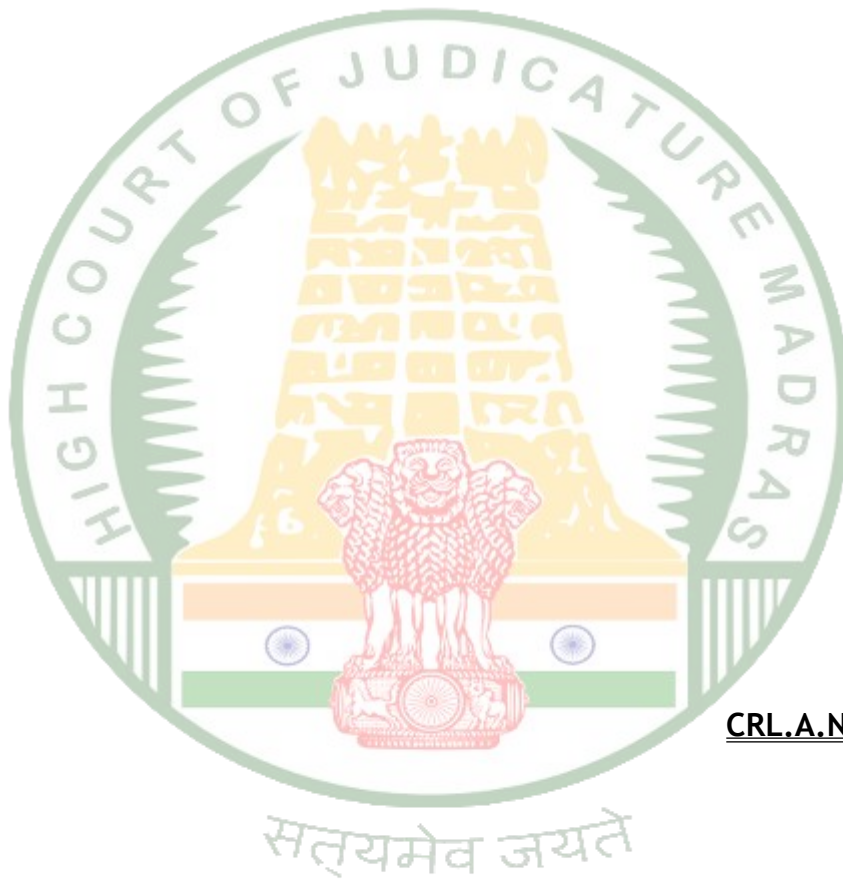
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To

1. The Judicial Magistrate,
Fast Track Court,
Hosur.

N.AUTHINATHAN, J

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