

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2017

Pronounced on : 04.04.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Cr1.A.No.62 of 2016

M/s.Pandiyan Finance,
Partnership Firm
No.23/M2, Dinesh Complex,
EVK Sampath Road,
2nd Cross, Moolapattrai Road,
Erode - 3.

Power Agent/Manager,
P.Selvaraj
S/o. Ponnusamy

... Appellant/Complainant

V.

K.Periyasamy

... Respondent/Accused

Prayer: Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the order of acquittal dated 02.11.2015 made in S.T.C.No.206 of 2015 on the file of the Judicial Magistrate/Fast Track No.1, Erode.

For Appellant	: Mr.M.Guruprasad
For Respondent	: Mr.V.Subramanian
	For M/s. SP.Yuvaraj
	Mr.P.R.Shivakumar

JUDGMENT

The Appellant/Complainant has filed the present Criminal Appeal before this Court [as an affected person] as against the Judgment of Acquittal dated 02.11.2015 in S.T.C.No.206 of 2015 passed by the Learned Judicial Magistrate No.1, (Fast Track Court), Erode.

2.The trial Court, while passing the impugned 'Judgment of Acquittal' dated 02.11.2015 in S.T.C.No.206 of 2015, at paragraph 11, had, among other things, observed that "... without obtaining a license, the amount lent would not be the 'Legally Enforceable Debt'" and further at paragraph 15, had opined that 'no documents were filed in regard to the aspect

that in the Complainant's Firm, Selvaraj was serving as a Managing Director and also for knowing about the case cheque amount details'. Also that, at paragraph 16, the trial Court had proceeded to observe that within six months from the commencement of the Complainant's Firm, it had the capacity to lend a sum of Rs.5,90,000/- for which no documents were filed on behalf of the Complainant and therefore, came to the conclusion that the Complainant's Firm had no capacity/wherewithal to lend a sum of Rs.5,90,000/- and a finding was rendered to the effect that the case cheque amount was not a 'Legally Enforceable Debt'.

3.In short, the trial Court ultimately found that the Complainant/ Appellant's Firm had not established beyond reasonable doubt its case against the Respondent/Accused that he had committed an offence under Section 138 of the Negotiable Instruments Act and acquitted him under Section 255(1) Cr.P.C.

4.Questioning the correctness of the Judgment of Acquittal delivered by the trial Court in S.T.C.No.206 of 2015 dated 02.11.2015, the Appellant/Complainant has filed the instant Criminal Appeal before this Court by taking a plea that the Respondent/Accused had not denied the Execution of Cheque and therefore, the onus to rebut the presumption naturally arises under Section 118 and 139 of the Negotiable Instruments Act, 1881.

5.According to the Learned Counsel for the Appellant/Complainant, the Respondent/Accused had not explained as to how the Ex.P1 - Case Cheque came into the hands of the Appellant/Complainant. Furthermore, the Respondent/Accused had not given any Reply to Ex.P3 Lawyer's Notice.

6.The Learned Counsel for the Appellant/Petitioner emphatically contends that the Power Agent (P.W.1) had deposed that he is aware of the transaction between the Appellant and the Respondent/Accused and therefore, the conclusion arrived at by the trial Court that P.W.1 (Power Agent - Selvaraj) had not established that he had knowledge of the transaction is an incorrect one.

7.Continuing further, it is represented on behalf of the Appellant/ Complainant that in the Tamil Nadu Money-Lenders Act, 1957, it is specifically mentioned that any transaction based on Negotiable Instruments Act exceeding Rs.10,000/- would not come under the said Act, but this fact was omitted to be considered by the trial Court, which has resulted in miscarriage of Justice.

8.A plea is taken on behalf of the Appellant/Complainant that 'Judgment of Acquittal' of the trial Court in the main case

was based only on surmises and not on available material evidence on record.

9.The Learned Counsel for the Appellant/Complainant brings it to the notice of this Court that in the instant case, the Respondent/ Accused had not pleaded any probable, acceptable and reasonable defence and in reality, on the date of issuance of Cheque, there was an existence of 'Legally Enforceable Debt'. Unfortunately, these aspects were not taken into consideration by the trial Court in a proper and real perspective.

10.The Learned Counsel for the Appellant cites the decision *Indiabulls Financial Services Limited & another V. M/s.Jubilee Plots and Housing Private Limited & others*, 2010-2-L.W.75 at special page 76, whereby and whereunder, it is observed as follows:

"As per section 2(6)(vi) of the Tamil Nadu Money Lenders Act, 1957, an advance made on the basis of a negotiable instrument exceeding Rs.10,000/-= would not fall under the definition of loan - Therefore, a money lender, who makes advances on the basis of a negotiable instrument exceeding Rs.10,000/=-, is not "a person" referred to in section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 - A debtor cannot lawfully charge a person viz., a money lender with the act of exorbitant interest when the money lender advanced the loan on the basis of a negotiable instrument exceeding Rs.10,000/=-."

11.The Learned Counsel for the Appellant relies on the decision *J.D.Nichani and another V. State of Madras* represented by its Secretary Department of Industries, Labour and Co-operation, AIR 1964 Madras 30, wherein, it is, among other things, held as follows:

"Neither the Act nor any of its provisions can be said to be unreasonable restrictions upon the money lender or of the business of money lending."

12.The Learned Counsel for the Appellant seeks in aid of the decision *A.Gunasekaran V. P.Velusamy*, 2014(1) MWN(Cr.) DCC 49 (Mad.), at special page 50, whereby and whereunder, it is observed as under:

"The combined reading of the Sections 2 (6), 3, 4 and 12 would lead to an interpretation that the definition of 'loan' and 'money lender' as defined under the

Money Lenders Act is also applicable to 'loan' and 'a person' as referred to under [Section 3](#) of the Tamil Nadu Act 38/2003. Non-obstante Clause in [Section 4](#) is applicable only to penalty and the penalty imposed under [section 4](#) is to be construed as in addition to penalty cause as provided under the Money Lenders Act. Similar view was expressed by the Division Bench of our High court in the judgment cited above. In the event of such interpretation, the advance made on the basis of negotiable instrument exceeding Rs.10,000/- would not fall under the definition of 'loan' and fall outside the purview of the Act and the defence advanced by the accused for seeking quash is not available to the accused and no valid ground is made out to quash the proceedings at the threshold. In view of such finding rendered herein, the authority cited on the side of the petitioner herein is not applicable to the facts of the present case. However, the petitioner is at liberty to raise all the defence available to him including that of the ground raised herein at appropriate stage before the trial court."

13. In response, it is the submission of the Learned Counsel for the Respondent that the Appellant/Complainant had not produced any document before the trial Court to show that it had obtained a licence to run the Finance Company and moreover, the registers, ledgers, account details of documents were not produced by the Appellant/Complainant before the trial Court and Ex.P9 - Account List was not certified as per Section 64 -B of the Indian Evidence Act, 1872.

14. The Learned Counsel for the Respondent submits that the trial Court, at paragraph 12 of the Judgment, had held that merely because, the Appellant/Complainant's name was shown in the 'Details of Sundry Debtors' on the last page of Income Tax Account, it could be considered that the Appellant/Complainant would have lent a sum of Rs.5,90,000/-

15. The Learned Counsel for the Respondent takes a plea that in Ex.P7 - Power Deed, no detail was mentioned to the effect that Selvaraj knows about the Case Cheque amount details. Likewise, in Ex.P3 - Lawyer's Notice also, it was not mentioned that the said Selvaraj had knowledge about the money transaction in an independent capacity. Besides this, the Appellant/Complainant comes out with a categorical stand that

the trial Court erroneously came to the conclusion that the Appellant/Complainant had not possessed the requisite wherewithal to lend a sum of Rs.5,90,000/- and therefore, the trial Court came to the conclusion that the Case Cheque was not an 'Legally Enforceable Debt' and finally, acquitted the Respondent/ Accused in respect of the offence under Section 138 of the Negotiable Instruments Act, which may not be interfered with by this Court sitting in Appeal.

16.The Learned Counsel for the Respondent cites the decision of the Hon'ble Supreme Court in A.C.Narayanan V. State of Maharashtra and another, AIR 2014 Supreme Court 630 (1), wherein it is observed as follows:

"From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his

witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. Thus, the Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions."

17.The Learned Counsel for the Respondent relies on the decision of this Court in Kathirvelu V. Anbazhagan, (2008) 5 MLJ 39, wherein it is observed and held as follows:

"As per Section 3(1) of the Tamil Nadu Money-Lenders Act, 1957, no person shall, on and after the date of commencement of the Act shall carry on or continue to carry on business as a money-lender, without holding license and the person holding license shall also run the same in accordance with the terms of such license. As per Section 9 of the said Act, the Money-lender must keep books of accounts and maintain regular records, relating to the money lending transaction and also give receipts for every payment received by the money-lender. Here in this case, admittedly, the appellant was running money lending business without having any license and no books of accounts or other connected records were produced to substantiate the suit claim. As submitted by the learned counsel for the respondent, as the claim is not genuine, the appellant has not followed the mandatory provisions and produced his books of accounts and other relevant documents, which are needed to establish the claim of the appellant."

18.It is to be relevantly pointed out by this Court that in the Complaint filed by the Appellant/Complainant in S.T.C.No.206 of 2015 on the file of the trial Court [through its Power Agent/Manager - P.Selvaraj], the Appellant/Complainant had averred that the Respondent/Accused had borrowed a sum of Rs.5,90,000/- from it on 07.09.2013 for his urgent Business needs, on the same day, towards discharge of his liability, to repay the debt, he issued a Post dated Cheque for Rs.5,90,000/- dated 07.10.2013 (Cheque was drawn on The South Indian Bank, Erode bearing No.117389 issued in favour of the Appellant/Complainant).

19.It comes to be known that the cheque was presented for collection on 07.10.2013 by the Appellant/Complainant at his Bankers Indian Overseas Bank, Thirunagar Colony Branch, but the same got returned with memo as 'Funds Insufficient' on 08.10.2013.

20.It transpires that Ex.P3 - Lawyer's Notice dated 01.11.2013 was issued by the Appellant/Complainant requiring the Respondent/ Accused to pay the due amount on the returned cheque amount within 15 days from the date of receipt of notice and the said notice was received on 08.11.2013.

21.In view of the fact the Respondent/Accused had failed to pay the amount due in question, a Complaint was filed by the Appellant/ Complainant in S.T.C.No.206 of 2015 on the file of the trial Court. A perusal of the Complaint in S.T.C.No.206 of 2015 on the file of the trial Court indicates that the Appellant/Complainant is a Partnership Firm (duly registered under the Indian Partnership Act, 1932) and one P.Selvaraj [being the Power Agent] is the Manager of the aforesaid Firm representing the Firm.

22.A cursory perusal of Ex.P7 - Power of Attorney dated 11.12.2013 executed by A.Mariappan and 8 others [Partners of the Appellant/Complainant's Firm] indicates that they had appointed their Manager one P.Selvaraj, S/o.Ponnusamy as their Power Agent to do engage or to do the following acts or things in connection with the Cheque bearing No.117389 dated 07.10.2013 drawn on The South Indian Bank Limited, Erode - 1: (a) To engage or appoint any legal Practitioners to take legal action either civil or criminal in respective courts; (b) To sign, everything's and files Vakkalaths, plaints, petition statements and complaints; (c) to appear before any court and given evidence on behalf of our company in connection with the above stated cheques etc.

23.Moreover, Ex.P9 is the Statement of Account of the Appellant/ Complainant for the period from 07.09.2013 to 07.08.2015, in relating to the Respondent/Accused. Ex.P10 is the Indian Income Tax Return Verification Form in respect of the Appellant/Complainant duly signed as True Copy by the Partner of the Chartered Accountants Firm. In Ex.P10 under the caption 'Details of Sundry Debtors', the name of Respondent/Accused was mentioned and an amount of Rs.5,90,000/- was also made mention of.

24.It cannot be forgotten that a 'Power of Attorney Holder' and a 'Special Power of Attorney Holder' can file a Complaint on behalf of the Complainant. This is because of the fact that the said complaints are maintainable by means of the definition of

'Power of Attorney' and proviso to Section 2 of the Power of Attorney Act. But, an examination of 'Attorney' as a 'Witness' in the capacity of Complainant is certainly not permissible in the eye of Law. Undoubtedly, a 'Holder of a Power of Attorney' can very well appear as a witness in his individual capacity. However, because of the non examination of the Complainant under Section 200 Cr.P.C., the cognizance taken by a Judicial Magistrate on a certain complaint cannot, by no means, be termed as an illegal or without jurisdiction.

25.Indeed, if a 'Power of Attorney Holder' had appeared as a Witness, his evidence can be looked into for the purpose of registering the complaint in question/for issuance of process under Section 204 Cr.P.C. However, for further proceedings, a Complainant should be examined and in case of a Managing Partner or Working Partner of a Partnership Firm or if it is a Company or any other juristic individual, then, the said person authorised in this regard is quite competent to adduce evidence, as opined by this Court. No wonder, neither the Criminal Procedure Code nor the Negotiable Instruments Act, 1881 mentions that any one can depose for and on behalf of the Complainant.

26.It is to be pertinently pointed out that the ingredients of Section 190 Cr.P.C. clearly permits any person to approach the Learned Magistrate to prefer a complaint. No qualification is prescribed for an eligible person to file a complaint. Any one can set the Criminal Law in Motion by filing a Complaint of facts constituting an offence before the Learned Judicial Magistrate concerned, who is empowered to take cognizance. After all, the concept of 'Locus Standi' is ALIEN to Criminal Jurisprudence. As a matter of fact, an explicit assertion as to the knowledge of 'Power of Attorney Holder' about the transaction in issue must be stated in the Complaint.

27.More importantly, if a 'Power of Attorney Holder' who is not possessing any requisite knowledge as to the transaction in question, then, he cannot be examined as a witness in a given case. That apart, a 'Power of Attorney Holder' can adduce evidence before the concerned Court and also to establish the averments of the complaint, he can verify on oath. However, the rider is that a 'Power of Attorney Holder' should have witnessed the transaction as an Agent of the Payee/Holder in Due Course should possess the requisite knowledge about the transaction in question.

28.It may not be out of place for this Court to point out that the Hon'ble Supreme Court, in the decision Janki Vashdeo Bhojwani v. Indusind Bank Limited, AIR 2005 Supreme Court 439, has held as follows:

"The 'Power of Attorney Holder' can appear as witness in his personal capacity and this is because of the ingredients of Order III Rule 1 and 2 of the Civil Procedure Code and 2 of the second Power of Attorney's Act (7 of 1882)."

29. In brief, a 'Power of Attorney Holder' cannot depose in place and instead of the principal. In fact, the word 'acts' in Rule 2 of Order III C.P.C. does not include the act of 'General Power of Attorney' to appear as a Witness on behalf of his party as per decision Ratheesh Kumar V. Jithendra Kumar, 2005 AIHC 2870 (DB) (Ker.).

30. At this stage, this Court relevantly points out that the 'Registration of a Partnership' is an optional one. Furthermore, one Partner cannot compel another Partner to join in the Registration of Firm. As a matter of fact, the Registration of Firm is effected only with the entry of statement is recorded in 'Register of Firms' and the statement is filed by the Registrar as per Section 59 of the Indian Partnership Act. Besides this, Section 58(1) of the Indian Partnership Act, 1932 is not to be read in isolation and has to be considered along with the scheme of other provisions of the Act viz., Sections 59 and 69.

31. It cannot be gainsaid that 'an illegal Partnership can prosecute a person for theft of its property' as per decision R. V. Frankland, 1883 L & C 276. That apart, persons engaged in an illegal business whether Partners or not and whether incorporated or not are liable to suffer the sanction of Criminal Law.

32. Also that, in case of a Criminal Breach of Trust, Cheating, it was held that non registered firm had the right to criminal proceedings where an offence was completed, the prosecution proceedings could be initiated not for recovery of amount covered by the cheque but for bringing the offender to penal liability, as per decision Gurucharan Singh V. State of U.P. III 2002 B.C. 164 (All.). In fact, the bar created under Section 69(2) of the Indian Partnership Act, 1932 applies to 'Suit' only. It has no application for maintaining criminal proceedings under Section 138 of the Negotiable Instruments Act.

33. In fact, the filing of a Complaint in respect of an offence under Section 138 of the Negotiable Instruments Act is permissible through Holder of Power of Attorney, the Complainant, but if the Complainant alone was a witness of the transaction, then, Complainant had alone make a statement as required under Section 200 Cr.P.C. in support of the complaint. However, if the transaction was witnessed by 'Holder of Power of

Attorney' himself as an Agent of Payee, then, Power of Attorney alone could be a witness and the statement have to be made by him alone. If the transaction was witnessed by the Complainant and Attorney both, statement as witness may be made by either, as opined by this Court.

34. Strictly speaking, law does not insist that 'Payee' or 'Holder in Due Course' should personally file a complaint his duly authorised Power of Attorney can file the complaint on his behalf. Once the Complaint is in the name of 'Payee' and is in writing, the ingredients of Section 142 of the Negotiable Instruments Act are fulfilled. In reality, who should represent the Payee, where the Payee is a Company or how the Payee should be represented, where Payee is a sole Proprietor concern, is not a matter that is governed by Section 142 of the Negotiable Instruments Act, 1881.

35. In terms of the ingredients of Section 138 of the Negotiable Instruments Act, a person who is entitled to prefer a Complaint must be a Payee or a Holder in Due Course. Moreover, an existence of a legally recoverable debt is not a matter of Presumption under Section 139 of the Negotiable Instruments Act. In reality, the ingredients of Section 139 of the Negotiable Instruments Act applies only if the cheque was established to be of nature mentioned in Section 138.

36. Besides this, the strict liability under Section 138 of the Negotiable Instruments Act can be enforced only when a cheque was issued in discharge of any legally enforceable debt or other liability partly or wholly. But the burden to prove that the cheque was not issued against an legally enforceable debt was on the Respondent/ Accused. Admittedly, a cheque must be issued in respect of either post or existing debt or other liability. Under Section 138 of the Negotiable Instruments Act, the cheque must be drawn for the discharge of whole or part of liability. If this aspect is not traversed in the complaint petition, then, it is fatal.

37. Added further, an offence defined under Section 2(n) of the Criminal Procedure Code includes not only the doing of possible act, but by omitting to do something as well. Also, the burden is on the Complainant to establish that the cheque was signed by a Drawee in discharge of 'Legally Enforceable Debt'. In the absence of any cause of action, a person cannot launch a prosecution. In terms of the Negotiable Instruments Act, 1881, the arising of cause of action is not mere presentation of cheque nor mere dishonour of cheque alone, real cause of action is non payment of cheque amount or non compliance of demand through notice by the 'Drawer' within the statutory period.

38. In this connection, this Court aptly points out that as per Section 34 of the Indian Evidence Act, 1872 a 'Book of Account' must be a fool proof one. An entry in an Account Book regularly kept is of immense value only to establish that the entry was made at the time of the transaction. There is no particular form of Account Book is prescribed. But the said book must be of a regular and usual account book which explains itself and appears on its face, to create a liability in an account with the party against whom it is offered. Moreover, an individual making the entries should have personal knowledge of the facts stated therein.

39. Ordinarily, the entries in Books of Account, regularly kept in the course of business, are relevant in all proceedings in a Court of Law but, these entries are not by themselves sufficient to charge any person with liability. Only an individual is to prove by some other independent corroborative evidence that the transaction in question is a real and honest one. Further, the entries in an individual's own Account Book relating to payment to the opposite party, are to be supported by a corroborative evidence, either by production of receipts or by proving the payments by an independent, acceptable and reliable evidence. After all, there must be some evidence to corroborate the entries in the Account Books. Undoubtedly, the entries in an Account Book maintained by a Creditor are not by itself evidence to vest a liability upon a Debtor but they can be used to corroborate evidence given by the Creditor that the payments were made and it is for the concerned Court of Law to act upon it and to pass appropriate necessary orders thereto.

40. Indeed, what is required in each case is whether apart from the entries in a Book of Account, is there any evidence to establish that the transactions referred to in those entries had actually taken place?. Such a corroboration can be made through the evidence of an individual who wrote the Books of Accounts and whose presence the transactions had taken place [vide Dwarka Doss Baboo Jankee Doss, (1855) 6 MIA 88, 98]. Further, a proper and competent person is to speak about the entries should be examined as a witness to show that the transaction in issue was a honest and bona fide one. A reading of Section 34 of the Indian Evidence Act, 1872, does not in any way prevent the nature of material upon which a Court of Law may rely upon to support the statements in a Books of Accounts. In fact, it may be like vouchers, receipts or any other documentary evidence or of individual's oral testimony.

41. In the instant case on hand, before the trial Court on 06.02.2014 the Power of Attorney Agent and Manager of the Appellant /Complainant's Firm was examined as P.W.1 and Exs.P1

to P7 were marked. The Learned Judicial Magistrate, Fast Track Court No.1, Erode had opined that a prima facie case was made out as against the Accused (Respondent) under Section 138 of the Negotiable Instruments Act and took the Complaint on file in S.T.C.No.206 of 2015 and directed the issuance of summons to the Accused on payment of process fee and directed the matter to be called on 06.05.2015. Although the Complainant was not examined under Section 200 Cr.P.C., yet, the cognizance taken by the trial Court on the Complaint is perfectly maintainable in Law, in the considered opinion of this Court. Before the trial Court, P.W.1 in his cross examination, had stated that he had not produced any document to show that he continues to be the Manager of the Appellant/ Complainant Firm. In fact, in his evidence, he had admitted that he had not filed any license for the Appellant's Finance Firm to run the Finance Business. Even in the notice, complaint and in his chief examination and in Power Deed, P.W.1 had not stated that he knows about the money financial dealing details in a complete fashion. At best, atleast on behalf of the Appellant/Complainant, one of the Partners might have been examined before the trial Court in the main case. But that is not the position in the present case. The Account Book, separate Register, registered pertaining to the Appellant/ Complainant's Finance Company was not produced before the trial Court and marked as an Exhibit.

42.In the present case, P.W.1 was examined on behalf of the Appellant/Complainant and since he had not appeared as a witness in his personal capacity, he could not appear as a witness on behalf of the Appellant/Complainant in the capacity of Complainant. Also that, before the trial Court, no documents were produced to show that within six months of commencement of its business, the Appellant/ Complainant had the capacity to lend a sum of Rs.5,90,000/-.

43.In view of the aforesaid forgoing discussions, as far as the present case is concerned, this Court is of the earnest view that in the present case, based on the materials available on record, it is not possible for this Court to deliver a Judgment and therefore, is of the considered opinion that the Remand of the matter is Just, Fair and necessary. Otherwise, there would be a failure and miscarriage of Justice. Besides this, this Court opines that the evidence of the Complainant is necessary to prosecute the complaint filed by P.W.1 in order to render correct Judgment in the case, atleast a single Partner from the Appellant/Complainant's Firm who had lent money to the Respondent/Accused should be examined as witness on behalf of the Appellant/Complainant. For that purpose, this Court considers that the Remand of the entire gamut of the matter is an irresistible one. If atleast one of the Partners of the Appellant/Complainant's Firm is examined or more Partners are examined as Complainant side witnesses, then, he or they may

throw light before the trial Court whether the Respondent/Accused owes a certain/specified/quantified sum. Apart from that, the Account Book of the Appellant/Complainant's Firm can be marked as an exhibit through relevant competent witness and the entry/entries showing the money advanced by the Respondent /Accused can be proved in the manner known to Law and in accordance with Law. Even an Accountant of the Appellant/Complainant's Firm can be examined before the concerned Court and the purported of the loan transaction of the Respondent/Accused can be established in accordance with Law. Viewed in these angles, to prevent an aberration of Justice and to promote substantial cause of Justice, this Court interferes with the Judgment of the trial Court in S.T.C.No.206 of 2015 dated 02.11.2015 and sets aside the same. Consequently, the Criminal Appeal succeeds.

44.In the result, the Criminal Appeal is allowed. The Judgment of the trial Court passed in S.T.C.No.206 of 2015 dated 02.11.2015 is hereby set aside for the reasons assigned by this Court in this Appeal. The matter is remanded back to the trial Court for fresh disposal in the manner known to Law and in accordance with Law. The trial Court is directed to provide an adequate opportunity to the Appellant/ Complainant to examine any one of the Partners as its witness or more number of Partners as witnesses on its side to show that the Appellant / Complainant had advanced money to the Respondent/Accused. Liberty is granted to the Appellant/Complainant to mark Account Books, or the Ledger entries of the Account Books through a competent witness like the Accountant of the Company to speak about the purported loan transaction. Suffice it for this Court to point out that it is open to the respective sides to raise all factual and legal pleas before the trial Court at the fresh hearing of the S.T.C.No.206 of 2015. The trial Court shall permit the Respondent/Accused to adduce rebuttal evidence by examining fresh witness/witnesses and to mark document(s) in the main case. It is needless for this Court to point out that the trial Court, in any event, shall dispose of the main case with a clear-cut, free, open and unbiased mind and that too in a dispassionate and an objective manner [of course, after providing enough opportunities to both sides by adhering to the principles of Natural Justice] within three months from the date of receipt of copy of this Judgment. Soon after disposal of the case in S.T.C.No.206 of 2015, the trial Court shall send a compliance report to the Registrar (Judicial) of this Court without fail.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl

To

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

2.The Registrar (Judicial)
High Court, Madras.

[For favour of information and
necessary follow up action]

3.The Section Officer,
Records Section, (Criminal Section)
High Court, Madras.

+1 cc to Mr.S.P.Yuvaraj Advocate sr 20336

+1 cc to Mr.M.Guruprasad Advocate sr 20441

Crl.A.No.62 of 2016

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