

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Criminal Appeal No.645 of 2016

M.R.Parthibanraj .. Appellant

versus

R.Kausik .. Respondent

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code to set aside the judgment dated 09.05.2016 passed in C.C.No.510 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore.

For Appellant : Mr.C.D.Sugumar

For Respondent : Mr.S.Saranraj
for S.J.Masood**JUDGMENT**

The complainant in C.C.No.510 of 2014 on the file of the learned Judicial Magistrate No.VI, Coimbatore is the appellant herein. He has filed the complaint against the respondent for the offence under Section 138 of Negotiable Instruments Act. He alleged that he lent Rs.75,00,000/- in the month of December 2012 to the respondent, that the respondent agreed to repay the same with interest

at 24% per annum, that the respondent has paid interest for a few months, that he has committed default in payment of interest, that the respondent handed over a Cheque (Ex.P1) bearing No.000090 dated 31.08.2014 for Rs.75,00,000/- and another Cheque (Ex.P2) bearing No.000096 dated 03.09.2014 for Rs.22,50,000/- to the complainant towards interest, that when the cheques were presented for encashment, they were dishonoured, that the complainant issued a notice calling upon the respondent to make payment, and that the respondent has sent reply denying his liability.

2. The respondent has taken a plea that he used to borrow small amount of money from the complainant. He owed to the complainant Rs.23,88,500/-. He has paid Rs.34,14,250/-, towards the discharge of the money borrowed from the complainant. The specific case of the respondent is that at the time of taking loans from the complainant, he handed over unfilled cheques, promissory notes and signed papers and those unfilled cheques were misused and the present complaint has been filed.

3. In support of the case of the complainant, he examined himself as P.W.1 and marked Ex.P.1 to Ex.P.7. In support of the case of the respondent, he examined himself as D.W.1 and one of his relative as D.W.2 and marked Ex.R.1 to

Ex.R.8. The respondent as D.W.1, has given evidence in support of his defence that unfilled cheques were handed over by him to the complainant.

4. The Trial Court has accepted the case of the respondent and acquitted him, holding that the case against the respondent was not proved. Aggrieved by the order of acquittal, the present Criminal Appeal has been filed by the complainant.

5. The learned counsel for the appellant has submitted that the Trial Court has failed to take into account the presumptions under Section 139 in favour of the complainant. The respondent has not raised any probable defence. He further submitted that the source of income of the complainant for paying the amount was proved by Ex.D.1, Bank Statement of the complainant and that the Trial Court has wrongly come to the conclusion that different ink was used for writing the contents of Cheques.

6. The learned counsel for the respondent would submit that the respondent has raised probable defence and he has discharged his initial burden and that the complainant has failed to prove that he has lent Rs.75,00,000/- as has been

claimed by him.

7. I have perused the materials on record and judgment of the Trial Court and the grounds taken in the Appeal.

8. The Cheques in question have been marked as Ex.P.1 and Ex.P2. Cheque (Ex.P.1) bearing No.000090 dated 31.08.2014 is for Rs.75,00,000/- and the Cheque (Ex.P.2) bearing No.000096 dated 03.09.2014 is for Rs.22,50,000/-. According to the complainant, he lent Rs.75,00,000/- to the respondent in the month of December 2012 and the respondent has agreed to repay the same with interest at 24% per annum. It is not in dispute that the cheques belong to the respondent and they bore his signature. The cheques were returned only on the ground “ funds insufficient” in the account of the respondent.

9. Admittedly, the cheques belong to the respondent and they bore his signature. Hence, it can be presumed that the cheques were issued for the discharge of the legally enforceable debt. However, it is well settled that the presumptions under Sections 118 and 139 of Negotiable Instruments Act are rebuttable in nature and the initial burden is on the accused to rebut the said presumptions. He has to

raise probable defence and discharge the initial burden of proof.

10. In the case at hand, the respondent has given evidence in support of his case and he examined one of his relatives as D.W.2 to show that unfilled cheques were handed over to the complainant, at the time of taking loan from the complainant. The respondent can discharge his burden, on the basis of preponderance of probabilities and for that purpose, he can also rely upon the evidence adduced by the complainant. The onus of proof on him is not heavy as that of the complainant.

11. The complainant claimed that the respondent approached him for a loan of Rs.75,00,000/- in the month of December 2012. However, in the complaint, he has not mentioned the date, on which he lent money. According to the complainant, the cheques in question were handed over to him on 31.08.2014. It is highly improbable that the complainant lent Rs.75,00,000/- without any documentary proof. It is important to note that in the legal notice, the complainant claimed that the respondent and his father borrowed money and they agreed to pay interest at the rate of 24% per annum.

12. 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. The complainant has not produced any dependable evidence to show that he was keeping Rs.75,00,000/- during 2012. It is seen from Ex.D.2 that the complainant is an Income Tax Assessee. However, he has not produced his Income Tax Returns to show that he has in fact lent Rs.75,00,000/- to the respondent in the month of December 2012. The Trial Court has also pointed out that different pens are used to fill the contents of the cheques and the signature portion of the cheques. The above circumstances in my considered view are sufficient to hold that the respondent has discharged his initial burden.

13. As the respondent has discharged his initial burden, the onus shifts onto the complainant to prove that he has in fact lent Rs.75,00,000/- to the respondent. Admittedly, there is no documentary proof for the loan. There is also no document to prove that the respondent agreed to pay interest at the rate of 24% per annum. The complainant has not produced dependable evidence to show that he has got Rs.75,00,000/- in the month of December 2012. Except the interested oral

testimony of the complainant, there is no other reliable evidence to prove his case. In view of the above mentioned circumstances, I have no hesitation to hold that the appellant has failed to prove his case beyond reasonable doubt. The Trial Court has taken a reasonably possible view. I do not find any ground to hold a different view. The Appeal is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed and the judgment of acquittal dated 09.05.2016 passed by the learned Judicial Magistrate No.VI, Coimbatore, in C.C.No.510 of 2014 is hereby confirmed.

20.09.2017

Index :Yes/No

Internet :Yes

mst / sri

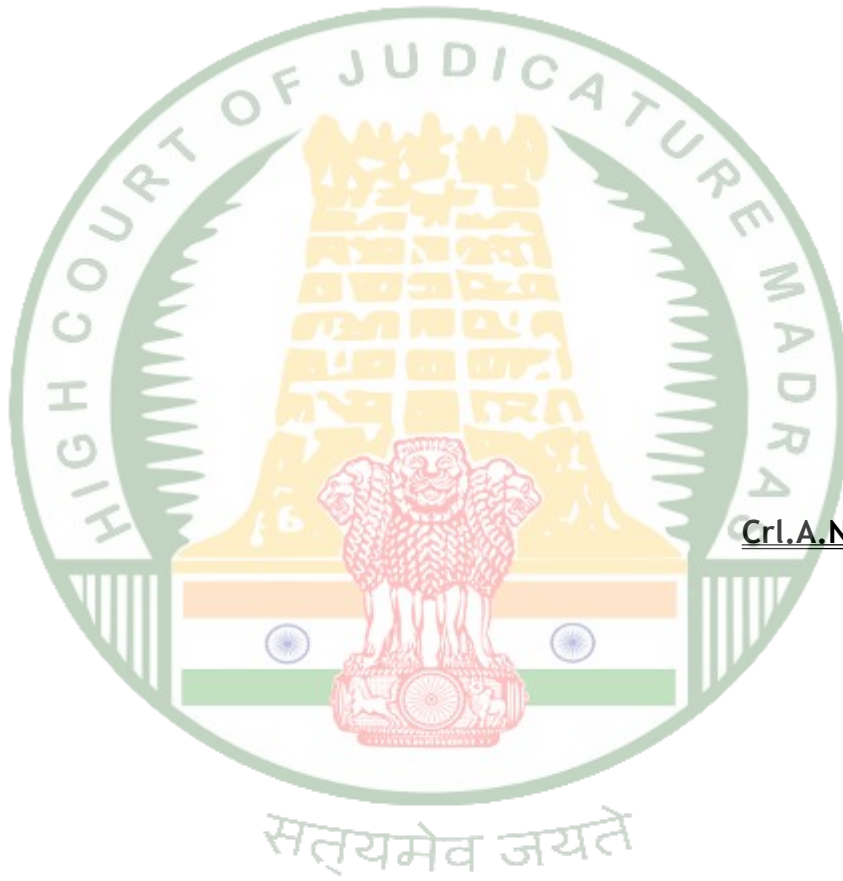
To

The Judicial Magistrate No.VI,
Coimbatore.

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N.AUTHINATHAN, J.

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Crl.A.No.645 of 2016

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