IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2018

DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal Nos.455 to 457 of 2008

Mangalam ... Appellant/Complainant in all Appeals

Vs

M/s.Natchathram Auto Garage by
its Proprietor, J.A.Mosesraj,
Daspuram,
Kodambakkam,
Chennai - 24. ... Respondent/Accused in all Appeals

Common Prayer: Appeals filed under Section 378 of the Code of Criminal Procedure, against the judgment dated 28.01.2008 passed in C.C.Nos.6705, 7861 and 6079 of 2003 respectively by the 11th Metropolitan Magistrate Court, Saidapet, Chennai-15.

(In all the Crl.A.s)
For Appellant : Mr.D.Baskar

For Respondent : Mrs.S.Sujatha
Legal Aid Counsel

COMMON ORDER

Criminal Appeals in C.A.Nos.455 to 457 of 2008 has been preferred under section 378(4) of Cr.P.C. by the Appellant against the Order of Acquittal dated 28.01.2008 passed in C.C.Nos.6705 of 2003, 7861 of 2003 and 6079 of 2003 on the file of the learned 11th Metropolitan Judge, Saidapet, Chennai. In fact there were three separate complaint cases and three separate judgments were passed on 28.01.2008. Vide the impugned judgment the Respondent /Accused was acquitted by the Learned trial Court against the Complaint filed by the Appellant / Petitioner under Section 138 of Negotiable Instruments Act, 1881 ("N.I. Act"). As such the appellant filed three appeals.

2.The Appellant / Complainant had filed a complaint case against the Respondent/Accused alleging that both of them were known each other and on account of his business needs, the Respondent / Accused borrowed a loan of Rs.2,50,000/- to settle some disputes in respect of Diwali Chit Collections. In discharge of his liability, the Respondent / Accused gave three post dated cheques to the Appellant / Petitioner as follows:

748135 for Rs. 1,00,000/- dated 12.04.2003

748134 for Rs. 50,000/- dated 29.04.2003 and

748133 for Rs. 1,00,000/- dated 28.04.2003

3.The case of the Appellant/Complainant is that there is rebuttable presumption in favour of her under Negotiable Instruments Act and hence the burden shifts to the respondent to disprove the initial burden. Since the issuance of cheques and signature was not denied. The second contention is that the Learned trial Court erred in its finding that the appellant failed to prove that the accused was doing chit business. The decisions reported by the learned trial Court in 2007 (2 SCC) (Crl) P.498 is in favour of the appellant and the trial Court specifically failed in seeing that the preponderance of probabilities is applicable only the accused rebutted the initial presumption available in favour of him.

4.The Learned Counsel for the Appellant also raise the issue alleging that the Learned Trial Court confused itself with respect to Sections139 and 118 of Negotiable Instruments Act and the exhibits clearly shows that the accused conducted the chit business and it is for the accused to prove that he has not conducted the chit business.

5.The Learned Counsel for the Appellant/Complainant vehemently argued that the Learned trial Court erroneously concluded that the appellant failed to prove that the amounts which have been collected for Deepavali chit funds even though there is clear evidence that the respondents wife has herself signed the chit cards and the Learned Trial Court did not taken into consideration of the admission made by DW 1.

6.This Court by an order dated 14.02.2018 directed the Legal Aid to appoint the Legal Aid Counsel for the Respondent since there is no representation for the respondent/Accused. Mrs.S.Sujatha, Advocate was appointed as a New Legal Aid Counsel for the respondent and she supported the judgment passed by the trial Court.

7.Advancing her arguments, the Learned Counsel for the Respondent submits that it is the duty of the appellant to prove the "legally enforceable debt" and alleged loan transactions between the appellant and the respondent and since she has failed in her attempt, the non explanation of the respondent is not fatal to her defence.

8.I have heard Mr.D.Baskar, learned counsel for the appellant and Mrs.S.Sujatha, learned Legal Aid Counsel for the respondent and perused the entire materials available on record.

9.The point that arises for my consideration is:

a) Whether the Trial Court was justified in granting an order of acquittal of respondent for the charge under Section 138 of N.I. Act?

10.Ordinarily in the criminal case, the onus is on the complainant to establish his case against the Accused beyond all shadow of doubt. In fact an Accused can maintain silence. Furthermore, he need not enter into the witness box for the purpose of adducing evidence. Per contra, he can collect gather favourable points from the evidence of the complainant and can make endeavour before the trial Court to shake the case of the Appellant. But in so far as the offence under section 138 of the Negotiable Instruments Act is concerned, it is to be borne in mind that it is a civil liability clothed in a criminal colour Apart from that, an offence under section 138 of the Negotiable Instruments Act does not involve any moral turpitude. The purpose of cheque transaction is for ensuring credibility and by indicating section 138 of the Negotiable Instruments Act, the efficacy of the Bank transactions to operate in healthy atmosphere is the purpose in the considered opinion of this Court. Section 106 of the Indian Evidence Act is an exception to the General Rule to governing the onus of proof applies to such matters of defence which were supposed to be specifically within the knowledge of the concerned litigant. Besides this, any presumption as top the quantum of consideration as distinguished from the mere existence of consideration has accordingly to be drawn, not by means of Section 118 or even under section 114 of the Indian Evidence Act, but only from the recitals, if any, that instrument may contain.

11.The cursory perusal of the all three complaints on the file of the Learned trial Court indicates that the Appellant/Complainant had averred that the Respondent/Accused was liable to pay the Cheque amount and that there was a legally enforceable liability as per section 138 of Negotiable Instruments Act.

12.The Appellant/Complainant had issued a statutory Legal Notice in respect of the aforesaid bounced three cheques within 15 days from the date of receipt of the said notice. Appellant / Petitioner led evidence and examined herself as PW 1. She was cross examined at length. It is well established principle of law that when the cheque is admitted to be signed by the Accused is produced, a presumption arises under Section 139 of N.I. Act about the existence of debt and issuance of cheque towards the repayment of said debt. Therefore, it is the responsibility of Respondent to rebut this presumption by placing material on record.

13.The Appellant/Complainant in her evidence had deposed that the respondent Accused was collecting Deepavali chit fund and jewel chit as his business, for this the Respondent/ Accused denied that he conducted chit business. Instead of proving the same, the Appellant/Complainant raises her plea that it is for the Respondent/Accused to prove the same. Further the Appellant failed to examine the witnesses corroborating the nature of chit business conducted by the Respondent/Accused. In fact, the Respondent/Accused examined DW1, the pawn shop owner having his business in the Anna Salai and he deposed that he gave Rs.2,50,000/- to the Appellant/Complainant. But in the cross examination of PW 1, she deposed that she borrowed One Lakh from one of her relative namely Gowry and other One Lakh from another relative namely Raja in the year 2003. But further she deposed that she also borrowed loan from DW1 and has not filed any document to support the same. This version was not supported through the initial Legal Notice sent and in the Complaint filed against the Respondent/Accused. Further there is a material contradiction in respect of the alleged money transaction of Rs.2,50.000/- which was given to the Respondent/Accused. The date of issuance of cheques and the payment of amount were all contradictory with each other and the same elucidated from the evidence of DW1.

14. As for as the presence case is concerned, the evidence of the Appellant goes a long way in making out the clear cut case and there were serious material contradictions in respect of the alleged loan amount of Rs.2,50,000/- paid to the Respondent/Accused and the Cheques issued in question. The presumption under Section 138 of the Negotiable Instrument Act is not an automatic one when the entire loan amount as alleged in the complaint creates the shadow of doubts. Further the Respondent/Accused is able to show certain materials to shake the case of the Appellant/Complainant, then the preponderance of the probabilities can be accepted by the trial Court, provided the said materials are worthy of acceptance and they satisfy the subjective conscious of the Court.

15. In fine, the judgment of acquittal dated 28.01.2008 passed by the trial Court in C.C.Nos.6705 of 2003, 7861 of 2003 and 6079 of 2003 on the file of the learned 11th Metropolitan Judge, Saidapet, Chennai is affirmed by this Court for the reasons assigned in this appeal. Accordingly the Criminal Appeals are dismissed.

16.The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Smt.S.Sujatha, Legal Aid Advocate.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

Index : Yes/No
Internet : Yes/No

To

1. The 11th Metropolitan Magistrate Court,
   Saidapet, Chennai-15.

2. The Secretary,
   Legal Services Authority,
   Madras High Court, Chennai.

+1 cc to M/s.D.Baskar, Advocate, S.R.No.78698
+1 cc to M/s.S.Sujatha, Advocate, S.R.No.78806
+1 cc to M/s.S.Sujatha, Advocate, S.R.No.78806(03/01/2019)

Criminal Appeal No.455 to 457 of 2008

VSN-II(CO)
SSM(10/12/2018)