

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2018

PRONOUNCED ON : 20.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.1452 of 2003

P.Jegadeesan ... Appellant / Complainant

-Vs-

1.M/s.Karthik Laboratories,
By its Partner Chettiappan
Having Office at
Plot No.226, SITCO Industrial Estate,
Ambattur, Chennai-98.

2.M.Chettiappan
3.V.Palaniappan ... Respondents / Accused

PRAYER: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, praying to set aside the judgment dated 10.03.2003 passed in C.C.No.59 of 2001 on the file of the learned Judicial Magistrate No.I, Salem.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.S.Ramasamy,
Senior Counsel,
For Mr.S.Ratnasabapathy

ORDER

The unsuccessful private complainant is the appellant herein. He has filed this Criminal Appeal to set aside the judgment dated 10.03.2003 passed in C.C.No.59 of 2001 on the file of the learned Judicial Magistrate No.I, Salem.

2.The private complainant / appellant herein has filed a private complaint in C.C.No.59 of 2001 before the learned Judicial Magistrate No.I, Salem, against the three accused persons. While the first respondent / first accused is the partnership firm, the second respondent / second accused is the Managing Partner and the third respondent / third accused is the partner, in day to day affairs of the business transaction. In

connection with the existing debt, the second respondent / second accused gave two cheques for a sum of Rs.23,00,000/- (Rupees Twenty Three Lakhs Only) dated 05.11.2000 and 23.11.2000. On deposit, they have returned as "Account Closed". After following the statutory notice, the present complaint has been lodged.

3.On consideration of both oral and documentary evidence, the learned Judicial Magistrate No.I, Salem has held that the case of the private complainant is unbelievable against all probabilities and accordingly, dismissed the complaint. Hence, the private complainant has approached this Court by way of filing this Criminal Appeal.

4.The learned counsel appearing for the appellant would contend that the second respondent has admitted the signature in the cheque and hence, he is entitled for presumption under Section 139 of the Negotiable Instruments Act and in the absence of any positive evidence, the trial Court has erred in dismissing the complaint.

5.Per contra, the learned Senior Counsel appearing for the respondents would submit that the third respondent / third accused has died on 14.10.2010, during pendency of this case and all the parties are closely related to each other. The private complainant is the son of the third accused, while the second accused is the son-in-law of the third accused and the partnership firm is the first accused and taking advantage of the relationship between the parties through the third accused / father, the private complainant has stolen signed cheque from the desk of the second accused and filed this criminal case. Furthermore, he has not got sufficient means to lend a sum of Rs.23,00,000/- being Village Administrative Officer, working in the Government of Tamil Nadu.

6.Heard the learned counsel appearing for the appellant and the learned Senior Counsel appearing for the respondents and perused the materials available on record carefully.

7.Point for determination is whether the order of acquittal passed by the trial Court is sustainable in law or not?.

8.In order to prove the charges, the private complainant has examined himself as P.W.1 and also examined the Assistant Manager of Majira Bank, Chennai Egmore Branch and also the Assistant Manager of Vijaya Bank, Salem as P.W.2 and P.W.3 respectively and marked Exs.P.1 to P.17. On the side of the

respondents / accused, the third accused examined himself as D.W.1 and also examined the Senior Manager of Dena Bank as D.W.2 and marked Exs.D.1 to D.7.

9. During the course of trial, D.W.1, the third accused relied upon the evidence of Ex.D.4 and contended that he is retired from the partnership firm. However, Ex.D.6 is the letter given by the second accused, shows that both the accused 2 and 3 are the partners of the first accused / partnership firm.

10. Be that as it may, now, it is represented by the learned Senior Counsel appearing for the respondents that the third accused has died, hence, the proceedings against him stands abated.

11. The suggestive case of the defence is that the first accused is the partnership firm, while the accused 2 and 3 are the partners and the third accused is the father of P.W.1 and he is the father-in-law of the second accused. Taking advantage of the relationship, the signed blank cheque has been misused. In other words, the signature in the cheque has been admitted by the second accused. Consequently, the complainant is entitled for presumption under Section 139 of the Negotiable Instruments Act.

12. It has to be now considered that whether the respondents / accused have rebutted the presumption to the level of preponderance of probabilities.

13. From the cross-examination of P.W.1, it is elicited that the date of transaction was not mentioned in the complaint. Only, in the evidence for the first time, the date of the transaction has been stated by P.W.1, which assumes significance. In the cross-examination, it is also elicited by the defence counsel that split up amount spoken to by P.W.1, does not sum up to the cheque amount and found to be a defect with regard to the cheque amount. The sum of the split up amount said to have been given by P.W.1 appears to be more and above the cheque amount. In the re-examination, it appears that he has come with an explanation and on his further in the cross-examination, it appears that a sum of Rs.17,00,000/- (Rupees Seventeen Lakhs Only) was said to as a principal and while the balance of amount is representing the interest therefor.

14. It remains to be stated that neither in the legal notice, nor in the chief examination, such a stand has been raised by P.W.1, which assumes significance. It remains to be stated that as stated supra, various amounts said to have been obtained by P.W.1 by the accused on different dates comes over and above the cheque amount and he has also come with a new plea

and explanation that Rs.17,00,000/- is representing the principal while balance of the amount is the interest towards the amount borrowed by them.

15.In such circumstances, this Court finds that the evidence of P.W.1 regarding the mode of payment and also source of his income for making such alleged payment of Rs.23,00,000/- is suffer from embellishment amounting to material contradiction, causing serious doubt as to the case of the private complainant.

16.Yet another point that has to be considered is that in the cross-examination, P.W.1 has come with a new plea that in connection with property dispute between the second accused and the private complainant, there was a village panchayat and in the said panchayat, for the amount due by the second accused, the cheque in the first accused firm has been issued. The trial Court has held that though a new plea has been raised in the cross-examination as to the manner of coming into the possession of the cheque spoken to by P.W.1 for the first time, in order to substantiate the alleged conduct of panchayat, he has not examined any of the panchayatar, who said to have conducted panchayat in this regard, which also assumes significance.

17.The alleged conduct of panchayat is not pleaded either in the legal notice or in the complaint. So also, no averment stated in the affidavit filed by him as to the manner of coming into the possession of the cheque in issue also assumes significance, in view of the suggestive case projected by the accused.

18.Thus, based upon the above infirmity touched upon the source of income especially, when P.W.1 is happened to be the Village Administrative Officer and being a Government employee, how he can lend a sum of Rs.23,00,000/-. However, he has not produced any document to substantiate the source or sufficient finance an amount of Rs.23,00,000/- was lent to the accused.

19.Thus, taking into consideration of the answer elicited in the cross-examination of P.W.1 regarding the bereft of details with regard to the date of transaction and the mode of payment by P.W.1 to the accused either in the complaint or the in the legal notice and also taking note of the fact that the parties are closely related to each other and the answer elicited in the cross-examination of P.W.1 with regard to split up amount spoken to by him does not sum up to the cheque amount mentioned in the cheque in issue and non-examination of the Panchayatar, who are alleged to have conducted panchayat in connection with the property and new plea of said panchayat stand raised only in the cross-examination and no document has

been shown to demonstrate that he had source of income to the tune of Rs.23,00,000/- especially when he being the Village Administrative Officer, the trial Court has come to the conclusion that the source of income has not been demonstrated by P.W.1 and his stand regarding the financial capacity to lend a sum of Rs.23,00,000/- found to be doubtful, in view of the infirmity as stated in the cross-examination touched upon the financial status, the trial court has rightly come to the conclusion that coming into the possession of the cheque in issue is doubtful and the financial capacity of P.W.1 to lend a sum of Rs.23,00,000/- by way of loan to the accused is also doubtful and held that the accused have demonstrated the suggestive case and they have probabilised their suggestive case to the level of preponderance of probabilities and accordingly, held that P.W.1 has miserably failed to demonstrate his financial status to lend the cheque amount. Such a finding of the trial Court, being well considered and well merited, does not warrant any interference by this Court.

20. In this view of the matter, this Criminal Appeal is dismissed. Accordingly, the order of acquittal dated 10.03.2003 passed in C.C.No.59 of 2001 on the file of the learned Judicial Magistrate No.I, Salem is confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.I,
Salem.
- 2.The Chief Judicial Magistrate,
Salem.
- 3.The Section Officer,
Crl Section, High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate Sr.89263
+1cc to Mr.S.Ratnasabapathy, Advocate Sr.138

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srg 21/01/2019