IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 07.03.2018
DELIVERED ON : 13.12.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal Nos.469 to 473 of 2011

Rajaguru Spinning Mills (P) Ltd.,
By its Managing Director S.Balu
rep. by his General Power of Attorney,
N.Kalyanasundaram
3/249 Sankari Main Road,
Vediyarasanpalayam, Pallipalayam,
Thiruchengode Taluk, Namakkal Dt.

.. Appellant/Respondent/Complainant
in all the Crl.A.s

Vs

G.Balaganapathy,
Proprietor,
Sree Mahendra Textiles,
Nallappa Gounder Line,
55/4, Erayniyam Street,
Solar Division, Erode-2.

..Respondent/Appellant/Accused
in all the Crl.A.s

Common Prayer: Criminal Appeals filed under Section 378(4) of the Criminal Procedure Code, to set aside the acquittal judgment pronounced by Principal Sessions Judge at Namakkal, in C.A.Nos.50, 49, 48, 46 and 47 of 2009 on 30.11.2010 and confirm the convictional judgment pronounced by the Judicial Magistrate, Thiruchengode in C.C.Nos.243, 76, 75, 17 and 18 of 2003 respectively on 01.07.2009 for an offence under Section 138 of N.I. Act.

(In all the Crl.A.s)
For Appellant : Mr.V.Vijayakumar

For Respondent : Mr.N.Manokaran

COMMON JUDGMENT

These criminal appeals were filed by the appellant for special leave to appeal to set aside the acquittal judgment pronounced by principal sessions Judge at Namakkal, in

Crl.A.Nos.46, 47, 48, 49 and 50 of 2009 and confirm the convictional judgment Pronounced by the learned Judicial Magistrate, Thiruchengode in C.C.Nos.17, 18, 75, 76, 243 of 2003 for an offence under section 138 of Negotiable Instruments Act.

2.Brief case in Crl.A.No.469 of 2011

The appellant preferred a complaint in C.C.Nos.17, 18, 75, 76, 243 of 2003 on the file of Learned Judicial Magistrate, Tiruchengode to prosecute the respondent under section 138 of Negotiable Instruments Act (herein after referred to N.I. Act).

3.The Appellant, Managing Director of Rajaguru Spinning Mills Private Limited and authorized agent and the respondent is G.Balaganapathi, Sri Mahendra Textiles Proprietor. It is stated as the respondent is having business dealings with the appellant's company and in the dealings, there was amount due to the appellant and the respondent issued a cheque on 22.7.1998 for sum of Rs.1,18,000/- and on 27.07.1998 for sum of Rs.59,500/- and both cheques drawn on Bank of Baroada. After issue of cheque, the respondent promised to pay the amount and the respondent requested the appellant, not to put the cheque for collection. On the basis of request, made by the respondent, the appellant did not present a cheque. Later on 07.10.2002, still the amount was due, the respondent received back the cheques dated 22.7.1998 and 27.7.1998 and corrected dates as 07.10.2002 and gave the cheque to the appellant. The appellant presented the chque on 17.10.2002 in his bank, Dhanalsakshmi Bank, Erode, and the cheques dishonoured for insufficient of funds. Then the complainant issued notice on 28.10.2002, and the same was received by the respondent on 29.10.2002. But the respondent sent reply on 23.11.2002, containing false allegations. Hence, the complainant had initiated the criminal prosecution against the respondent/accused under section 138 of N.I. Act before the Judicial Magistrate, Thiruchengode in C.C.No.243 of 2003.

4.During the trial, the appellant examined witnesses PW1 and marked documents Exhibit-P1 to Exhibit-P8 and on the side of the respondent no witnesses was examined and no documents were marked. Exhibit-P1 is the cheque issued by the respondent in favour of the appellant dated 7.10.2002, Exhibit-P2 is a cheque issued by the respondent dated 07.10.2002, Exhibit-P5 is the advocate notice issued by the appellant dated 28.10.2002, Exhibit-P6 is the A.D. card, Exhibit P7 is reply by the respondent dated 23.11.2002, Exhibit-P8 is the account book related to the period dated 1.4.1998 to 17.7.1998. After completion of trial, the learned Judicial Magistrate Convicted the accused by awarding 6 months simple imprisonment and imposed fine Rs.2000/- in default of fine, further period of 2 months simple imprisonment awarded.

5.Brief case in Crl.A.No.470 of 2011

This criminal appeal is filed by the appellant to set aside the acquittal judgment pronounced by the learned Principal Sessions Judge at Namakkal, in C.A.No.49 of 2009 on 30.11.2010 and confirm the convictional judgment Pronounced by the learned Judicial Magistrate Thiruchangode in C.C.No.76 of 2003 on 01.07.2009 for an offence under section 138 of Negotiable Instrument Act.

6.The Appellant had preferred a complaint before the Judicial Magistrates Court, Thiruchengode against the respondent alleging that since from 1998 the accused/respondent had a credit basis business transaction with the complainant and has to owe a sum of Rs.39,60,600/- In order to facilitate the credit facility availed, the accused had issued 3 cheques vide

Sl.No	Cheque No.	Date	Amount	Drawn on
1	0634036	09.10.2002	59,500/-	Bank of Baroda, Erode
2	0634037	09.10.2002	1,18,000/-	Bank of Baroda, Erode
3	0634038	09.10.2002	89,250/-	Bank of Baroda, Erode

7.Later, the respondent/accused, on the course of transaction altered the cheque dates as 09.10.2002 counter signed and issued the same to the appellant/complainant. On 17.10.2002 the appellant/complainant presented the cheques for collection were dishonored by the drawer bank as “exceeds arrangements”. The same was intimated to the appellant/complainant on the same day. On 26.10.2002 the appellant/complainant issued the legal notice by demanding the dishonored cheque amount. On 28.10.2002 the accused received the notice on 29.10.2002 and on 23.11.2002 the accused had replied the legal notice but did not repay the cheque amount.

8.Brief case in Crl.A.No.471 of 2011

This criminal appeal is filed by the appellant to set aside the acquittal judgment pronounced by the learned Principal Sessions Judge at Namakkal, in C.A.No.48 of 2009 on 30.11.2010 and confirm the convictional judgment pronounced by the learned Judicial Magistrate, Thiruchengode in C.C.No.75 of 2003 on 01.07.2009 for an offence under section 138 of Negotiable Instrument Act.

9.The Appellant had preferred a complaint before the learned Judicial Magistrates Court, Thiruchengode on the dishonour of the following cheques:

Sl.No	Cheque No.	Date	Amount	Drawn on
1	0634043	16.10.2002	1,19,000/-	Bank of Baroda, Erode
2	0634044	16.10.2002	59,500/-	Bank of Baroda, Erode

10.Later, the respondent/accused, on the course of transaction altered the cheque dates as 09.10.2002 counter signed and issued the same to the appellant/complainant. On 17.10.2002 the appellant/complainant presented the cheques for collection were dishonored by the drawer bank as "exceeds arrangements". The same was intimated to the complainant on the same day. On 26.10.2002 the appellant/complainant issued the legal notice by demanding the dishonoured cheque amount. On 28.10.2002 the accused received the notice on 29.10.2002 and on 23.11.2002 the accused had replied the legal notice but did not repay the cheque amount.

11.Brief case in Crl.A.No.472 of 2011

This criminal appeal is filed by the appellant to set aside the acquittal judgment pronounced by the learned Principal Sessions Judge at Namakkal, in C.A.No.46 of 2009 on 30.11.2010 and confirm the convictional judgment Pronounced by the learned Judicial Magistrate, Thiruchengode in C.C.No.17 of 2003 on 01.07.2009 for an offence under section 138 of Negotiable Instrument Act.

12.The Appellant had preferred a complaint before the learned Judicial Magistrates Court, Thiruchengode against the respondent here in for an offence under Section 138 of Negotiable Instrument Act for the dishonour of cheques mentioned below:

Sl.No	Cheque No.	Date	Amount	Drawn on
1	0634041	12.10.2002	59,500/-	Bank of Baroda, Erode
2	0634042	12.10.2002	59,500/-	Bank of Baroda, Erode

13.Later, the respondent/accused on the course of transaction altered the cheque dates as 09.10.2002 counter signed and issued the same to the appellant/complainant.

14.On 17.10.2002 the appellant/complainant presented the cheques for collection were dishonored by the drawer bank as "exceeds arrangements". The same was intimated to the appellant/complainant on the same day. On 26.10.2002 the complainant issued the legal notice by demanding the dishonoured cheque amount. On 28.10.2002 the accused received the notice on 29.10.2002 and on 23.11.2002 the accused had replied the legal notice but did not repay the cheque amount.

15.Brief case in Crl.A.No.473 of 2011

This criminal appeal is filed by the appellant to set aside the acquittal judgment pronounced by the learned Principal Sessions Judge at Namakkal, in C.A.No.47 of 2009 on 30.11.2010 and confirm the convictional judgment pronounced by the learned Judicial Magistrate, Thiruchengode in C.C.No.18 of 2003 on 01.07.2009 for an offence under section 138 of Negotiable Instrument Act.

16.The Appellant had preferred a complaint before the learned Judicial Magistrate Court, Thiruchengode against the respondent here in for an offence under Section 138 of Negotiable Instrument Act for the dishonuor of under mentioned cheques:

Sl.No	Cheque No.	Date	Amount	Drawn on
1	0634039	10.10.2002	1,18,000/-	Bank of Baroda, Erode
2	0634040	10.10.2002	59,500/-	Bank of Baroda, Erode

17.Later, the respondent/accused, on the course of transaction altered the cheque dates as 09.10.2002 counter signed and issued the same to the appellant/complainant. On 17.10.2002 the appellant/complainant presented the cheques for collection were dishonored by the drawer bank as "exceeds arrangements". The same was intimated to the complainant on the same day. On 26.10.2002 the appellant/complainant issued the legal notice by demanding the dishonoured cheque amount. On 28.10.2002 the accused received the notice on 29.10.2002 and on 23.11.2002 the accused had replied the legal notice but did not repay the cheque amount.

18.After completion of trial, the learned Judicial Magistrate convicted the Respondent/Accused by awarding 6 months simple imprisonment and imposed fine Rs.2000/- in default of fine, further period of 2 months simple imprisonment awarded. The imprisonment shall run concurrently along with the imprisonment awarded in other calendar cases in C.C.Nos.18/2003, 75/2003, 76/2003 and 243/2003.

19.Challenging the Order of conviction and Sentence, the respondent/accused preferred an appeal in Crl.A.Nos.46, 47, 48, 49 and 50 of 2009 before the learned Principal Sessions Judge, Namakkal. After hearing both sides, the learned Principal

Sessions Judge, Namakkal, by setting aside the order of the trial court, acquitted the respondent/accused in all the above said appeals.

20.Challenging the order of acquittal, the appellant being complainant in C.C.Nos.17, 18, 75, 76, 243 of 2003 has approached this Court by way of this Appeal. This court in its order dated 26.7.2011 granted leave in all the appeals in C.A.Nos.469, 470, 471, 472 and 473 of 2011.

21.The learned counsel for the appellant submits that the Appellate Court failed to consider that the trial court had given ample opportunities to the accused/respondent to rebut the statutory presumption, by sending the cheques to forensic laboratory for comparison of signatures. But the accused/respondent failed to rebut the statutory presumption by getting opinion from the experts to substantive his case. Then only the trial Court on its own conclusion renders the judgment by considering the evidence on record.

22.The learned counsel for the appellant submits that the Appellate Court failed to consider the trial Court judgment that at the request of the Accused/respondent's advocate's plea, and as per section 74 of the Indian Evidence Act, the trial court itself compared the signatures of the cheques, formed an opinion and rendered the judgment. The appellate Court without assigning any reasons set aside the judgment of the trial Court is not suitable in law.

23.The learned counsel for the appellant submits that the Appellate Court failed to appreciate the fact of the case and wrongly followed the proposition of law laid in a case between Rangappa Vs. Sri Mohan reported in 2010 (4) CTC 118, wherein stop payment instruction given by the drawer, but herein this case cheque dishonoured on the ground that "exceed arrangement" The yardstick followed in the said case law is not applicable in this case. The judgment of acquitted passed by the appellate Court, only on the basis of the said case law, has to be set aside.

24.The learned counsel for the appellant submits that the trial Court had given clear finding on the evidence, that Exhibit-P8 is the statement of transaction between the parties, wherein credit and invoice were made and also the part payment made by the accused along with his signature. As per the Exhibit-P8, there is a due of Rs.39,60,600/- But the accused stood on the stands that admitting the business transaction and averred all dues are settled in his reply notice, but unable to produce any documentary, much less oral evidence to the proof for settling all dues to the complainant. The appellate judge did not consider this aspect and acquitted the accused. The Hon'ble Apex Court laid down the law in a case between K.N.Beena Vs Muniappan reported in as

"However the burden of proving that a cheque had not been issuedFor a debt or liability is on the accused. This court in the case of Hiten P.Dala Vs BNratindraanath Banerjee reported in (2001) 6 S.C.C. 16 has also taken an identical view. In this case admittedly the respondent has led no evidence except some formal evidence. The High court appears to have proceeded on the basis that the denials/averments in his reply dated 21st May 1993 were sufficient to shift the burden of proof onto the Appellant/Complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The 1st Respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st respondent not having led any evidence could not be said to have discharged the burden cast on him. The 1st respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside that conviction.

25.Moreover, the evidence on record, in cross examination of PW1 has clearly bring the fact that, the accused came to the place of the complainant and wrote the new date by putting consent signature nearby. Though the accused denied the fact by putting suggestion, but did not adduce any evidence or proof that he did not done so, much less the accused did not gave any explanation during at the time of 313 questioning. The appellate Court without analyzing the evidence on record assign any reason for finding of the trial Court, had acquitted the accused.

26.The learned counsel for the appellant submits that the appellate Court by on surmises and conjunctures, reasoned that the inks on the strike mark on old the date and the consent signature are different inks. This finding is underlined by the appellate Court in its judgment, but did not explained what is the truth has culled out from the said fact. As well the appellate court did not explain that how far it is rebutting the presumption and supporting the defence taken by the accused that he never made any material alteration in the said cheques. But at the same time the appellate Court did not scrutinize the inks on the new date and the consent signature made by the accused in the said cheques. All the above, the accused/respondent admitted his reply notice Exhibit-P7 that he did same type of material alteration in some of the cheques. Hence, the judgment of the appellate Court is not a valid judgment in the eye of law.

27.The learned counsel for the appellant cited the judgment reported in Crl.A.No.1012 of 1999 rendered by the Hon'ble Supreme Court of India.

28.The learned counsel for the respondent supported the findings of the lower appellate court and cited the following decisions in support of his submissions:

i) (2010) 11 SCC 441 (Rangappa v. Sri Mohan)

ii) (2005) CTC 416 (Rajendra Finance, represented by Power of Attorney, Mr.A.R.G.Laxmi Narayana, No.83, Bajanai Koil Street, Choolaimedu, Madras-94 v. S.Alosius Thairiyanatham, No.43, Puram Prakash Road, Balaji Nagar, Royapettah, Madras-600 014)

29.The Learned Counsel for the respondent vehemently opposed the submission raised by the learned Counsel for the appellant. He submitted that there was no interference with the judgment and order passed by Principal District Judge. He submitted that lower Appellate Court had given cogent reason by allowing appeal filed by the respondent and there is no reason to interfere with the said judgment and order.

30.By consent, all the appeals are called out forthwith and heard finally.

31.I heard Mr.V.Vijayakumar, learned counsel appearing on behalf of the appellant and Mr.N.Manokaran, learned counsel appearing on behalf of the respondent in all the appeals and perused the entire materials available on record.

DISCUSSIONS:

32.The learned counsel for the appellant invited my attention to the evidence placed in all cases. PW1 deposed that the respondent issued a cheque for sum of Rs.1,18,000/- and another cheque for sum of Rs.59,500/- dated 7.10.2002. Whereas, the respondent contended as, the cheque was originally given on 22.7.1998 and 27.7.1998 for sum of Rs.1,18,000/- and Rs.59,500/- and the cheque were issued as security for the transaction of textile business between the parties. Later the amount was paid and the appellant himself struck out the dates 22.7.1998 and 27.7.1998 and put the date as 07.10.2002. The very same issue was taken in all the cases and it is unnecessary to reproduce the same.

33.The respondent contended that there is material alteration and the correction was not done by the respondent and the correction was without the consent of the respondent and also there was no amount due to the appellant on the date 7.10.2002.

34.It is seen that, originally the cheques was issued on with the dates 22.7.1998 and 27.7.1998, but, in the cheques, the dates struck out and altered as 7.10.2002. Now the point is according to PW1, the correction was done by the respondent, but according to respondent, material alteration was done by the appellant and because of material alteration made by the appellant, the respondent is not to honour the cheque, otherwise the respondent put forth as, the appellant has been given on the time barred cheque Exhibit-P1 and Exhibit-P2 with material alteration.

35.It is seen that all the other connected cases were of this nature and the dispute regarding alteration was challenged by the respondent in all the appeals.

36.I am in agreement with the respondent that the presumption mandated by section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat's case may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

37.Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant accused cannot be expected to discharge an unduly high standard of proof.

38.As clarified, 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 case of the appellant is that the respondent admitted the issuance of cheques and the signatures contained in the cheques leave. The respondent has not admitted the alterations and dates in the cheques i.e., Exhibits-P1 and P2. Further the respondent contends before this Court that the alterations have been carried in the cheque leaves after 4 years and if really there was any amount due, the appellant ought to have obtained new cheques and there is no necessity for him to obtain the cheques by struck out the dates after 4 Years. Hence the learned lower appellate court rightly raised the suspicion regarding the alteration made by the appellant. There are no materials available against the respondent regarding the alteration made in the cheque leaves. It is not possible to accept the submissions made by the learned Counsel for the appellant. Finding is recorded by the lower appellate court that the cheque issued by the respondent was altered. Taking into consideration the various circumstances and also after recording admissions given by the appellant, lower Appellate Court has further observed that the appellant herein did not substantiate with available materials in his evidence that the alterations on the cheques was that of the respondent. Thereafter, the lower Appellate Court has proceeded to consider the evidence on record and more particularly the admissions given by the appellant. The Court below after discussing all these facts and the evidence on record in right perspective reached to the conclusion that the presumption has been rebutted and the time barred altered cheques was not given for discharge of any legal liability. A perusal of the reasoning shows that it is as per evidence and law. There is nothing on record to show that the findings are perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread and which material evidence has not been considered by the Court below in right perspective and as to how the findings given by the learned Principal District Judge, are perverse. I do not see any infirmity in the observations made by the lower Appellate Court. Consequently, I find there is no merit in these appeals and the same therefore is hereby dismissed. The learned Judicial Magistrate Thiruchengode is ordered to execute the sentences imposed in C.C.Nos.17, 18, 75, 76, 243 of 2003 for an offence under section 138 of Negotiable Instruments Act in its judgment dated 01.07.2009.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate, Thiruchengode.

3.-do- Thro' The Chief Judicial Magistrate,
Namakkal.

Copy to

The Section Officer,
Criminal Section, High Court,
Madras.

+5cc to Mr.N.Manokaran, Advocate, S.R.No.86581 to 86585

Criminal Appeal Nos.469 to 473 of 2011

GJ(CO)
GSP(10/01/2019)