

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 13.04.2018]

[Pronounced on : 24.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.A.No.110 of 2007

S.Boopathi ..... Appellant/Complainant

... Vs ...

Mrs.Thilagavathi .... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 (2) of Cr.P.C., to set aside the Judgment made in S.T.C.No.2104 of 2005 by the Judicial Magistrate No.7, Coimbatore dated 08.11.2006.

For Appellant : Mr.S.Gunalan  
For Respondent : Mr.J.Pothiraj

JUDGMENT

The private complainant is the appellant herein.

2. The appellant/petitioner has filed a private complaint before the learned Judicial Magistrate, Coimbatore, in S.T.C.No.2104 of 2005 alleging that the respondent/accused was a guarantor of Mr.R.Muthusamy (her husband) as he failed to repay the bid amount of Rs.3,71,350/- out of Rs.5,00,000/- and hence, when demand, she had executed a pronote in question for a sum of Rs.1,70,000/- and agreed to pay the balance of Rs.9870/- very soon. However, on presentation, the cheque was returned as " Account Closed". When legal notice, dated 12.05.2005 was issued under R.P.A.D is 'returned' has not claimed and thereafter, he filed the complaint taken as S.T.C.No.2104/06.

3. In support of this case, he has examined as P.W.1 and Exhibits P1 to P12 were marked. On behalf of the respondent/accused, she examined herself as D.W.1 and also examined as D.W.2 Muthuswamy one of the subscriber in the chit fund run by the complainant and D.W.3 Rockiappan, working as Assistant in the Arbitrator-cum-Registrar for chit fund cases and D.W.4, Manager in the Bank of Baroda.

4. The sum and substance of the suggestive case of the respondent/accused is that, she has never issued the cheque-in-question as pleaded by the petitioner/appellant and for the cost payment of the prized chit amount, in the Arbitration Court, the case No.39 of 2001 is pending and when that being the case, she could not have executed the document namely, the cheque-in-issue and furthermore, in respect of a cheque having two serial number head a similar claim was made by the petitioner/appellant through Exhibit B1 document as if Cheque No.0300582 bank of Baroda, Ram Nagar Branch was issued to him and it was returned as closed. When such being the case in the year 2003 itself, the possibility of issuance of another cheque from the very same bank on 15.04.2005, in its all probability is nothing but manipulation of the petitioner/accused and hence, sought for an acquittal.

5. On examination of oral and documentary evidence, the trial Magistrate on taking note of the Exhibit D2, D4 and D5 have come to the conclusion that when it was admitted case that the petitioner/appellant having issued a legal notice in respect of a cheque dated 22.07.2003 in respect of the very same Bank was returned as "Account Closed", he could not have accepted a cheque from the very same bank in the year 2005 i.e., 15.04.2005 and furthermore, in respect of previous cheque bounce, he has not taken any action under the Negotiable Instruments Act. When that being the case, the probability of issuance of the cheque from the very same Bank in which, he has already closed the account and while, the complainant was also having the knowledge as early as in the year 2003. Therefore, the story projected by the petitioner is of unbelievable. Furthermore, in respect of the disputed prize amount of bid by the husband of the respondent, before Registrar of chits, the case is pending and therefore, the trial Court has come to the conclusion that issuance of the cheque by the respondent as projected by the complainant is unbelievable and dismissed the complaint and hence, the revision.

6. The learned counsel for the petitioner would submit that the signature in the cheque is not disputed and execution of the cheque is not in dispute, hence the petitioner is entitled for presumption and therefore, he seek to set aside the order of the trial Court.

7. The learned counsel for the respondent has made submission in support of the order of the trial Court.

8. After going through the evidence of the P.W.1 and the documents produced on the side of the respondent especially Exhibits B2, B4 and B5, this Court find that even as early as on 22.07.2003, the cheque alleged to have been issued by the respondent herein was bounced on the ground of "Account closed" and it appears that the appellant also issued a legal

notice for which, the respondent also issued a reply notice and it appears, there was no prosecution under the Negotiable Instruments Act assumes significance. When such being the case, the trial Court has entertained a great deal of suspicion that when in the year 2003 itself, when the account of the respondent with the Bank of Baroda is closed, no prudent man could accept the cheque from very same bank which account was already closed. Furthermore, it is a specific case of the respondent that at time of taking the prize amount, she is a guarantor, she has issued two cheques as surety of the amount in respect of that amount. The case is now pending before the Registrar of chit funds as could be seen from the evidence of the D.W.3, the suit from the chit funds and also the connected document namely Ex.B2 and Ex.B3. Therefore, the trial Court has correctly come to the conclusion that the petitioner/appellant has miserably failed to demonstrate the cheque was issued for legally enforceable debt and as such, though the presumption is in favour of the appellant on admission of the signature and the acceptance of the execution of the cheque. However, such a presumption is only a rebuttable presumption and in the instance case through the documentary evidence as well as the independent evidence, the respondent has categorically demonstrated that there is no legally enforceable debt and now the cheque-in-issue is only given as a surety for the prize amount taken by the husband of the respondent and hence, the finding of the trial Court in this regard is well found and well merited does not warrant any interference by this Court.

9. Accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.7, Coimbatore.
2. The Section Officer, Criminal Section,  
High Court, Madras.

+ 1 cc to M/s. S.Gunalan, Advocate Sr.49294

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NRL (CO)

EU (16/08/2018)

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