

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal No.726 of 2015

L. Gopi

...Appellant/Complainant

Versus

M.Rajini

...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records in connection with C.A.No.96 of 2014 on the file of the learned III Additional Sessions Judge, Thiruvallur at Poonamalle, Chennai and set aside the judgement passed by the learned III Additional Sessions Judge, Thiruvallur at Poonamalle passed on 18.04.2015 in C.A.No.96 of 2014 reversing the judgment passed by the Fast Track Court (Magistrate level) at Poonamalle dated 18.09.2014 in S.T.C.No.1 of 2013.

For Appellant : Mr.V.Paarthiban

For Respondent : Mr.R.Sunil Kumar

JUDGMENT

This Criminal Appeal has been preferred against the order passed in C.A.No.96 of 2014, by the learned III Additional Sessions Judge, Poonamalle by judgment dated 18.04.2015 by and under which the judgment and conviction of the learned Fast Track Court- II (Magistrate level) Poonamalle made in S.T.C.No.1 of 2013 dated 18.09.2014, has been reversed.

2. The case of the appellant/complainant is that, the respondent/ accused borrowed a sum of Rs.5,75,000/- on 30.03.2012 and on the same day, in order to re-pay the same, the respondent/accused had given three cheques bearing cheque Nos. 868775, 868776 and 868777 dated 01.06.2012, 09.06.2012 and 16.06.2012 for a sum of Rs. 1,25,000/-, Rs.1,25,000/- and Rs.3,25,000/- respectively. It is the further case of the appellant/complainant that, the said three cheques were deposited for collection of money at the complainant's bank. However, the said cheques were returned on 19.06.2012, from the bank stating that there was no sufficient funds in the account of the respondent/accused. Thereafter, on information given by the appellant/complainant to the respondent/accused, he had given request to re-present the said three cheques and

accordingly, on 16.08.2012, again the three cheques were re-presented and at that time also the three cheques were returned on 27.08.2012, for want of funds.

3. Thereafter, on 22.09.2012, the appellant/complainant had sent a statutory notice under Section 138(b) of Negotiable Instruments Act, which was returned as unclaimed. Therefore, the appellant/complainant set the law in motion by filing a private complaint before the trial Court seeking to try the case and punish the respondent/accused under Section 138 of Negotiable Instruments Act. The trial Court has taken the case on file and after tried the matter, by the judgment dated 18.09.2014, convicted and sentenced the respondent/accused for four months simple imprisonment and also imposed a fine of Rs.3,500/- in default, directed the respondent/accused to undergo simple imprisonment for one month.

4. Aggrieved over the said judgment and conviction made by the trial Court, the respondent/accused has preferred an appeal before the first appellate Court, viz., III Additional Session Court, Poonamalle. The first appellate Court having considered and re-appreciated the evidence on both side and having ultimately concluded that there is an error in the judgment and conviction as against the respondent/accused, allowed the appeal filed by the respondent/accused by reversing the judgment and conviction of the trial Court. Aggrieved over the order of the first appellate Court reversing the trial Court judgment and giving acquittal to the respondent/accused, the appellant/complainant has preferred this appeal before this Court.

5. It is the case of the complainant before the trial Court that, on 30.03.2012, the respondent/accused had borrowed a sum of Rs.5,75,000/- and on the same day, he gave three cheques for Rs.1,25,000/-, Rs.1,25,000/- and Rs.3,25,000/- dated 01.06.2012, 09.06.2012 and 16.06.2012 respectively, and when the cheques were presented at the bank of the complainant, they were returned for want of funds and on information, again the same were re-presented to the complainant's bank and once again, the cheques were returned for "insufficient funds". Thereafter, though statutory notice had been given by the complainant, the respondent/accused had not claimed the same and therefore, without having any other option, except to invoke Section 138 of Negotiable Instruments Act r/w Section 200 of Cr.P.C., the complainant has made a complaint before the trial Court against the respondent/accused. On behalf of the complainant, he himself was examined as P.W.1 and the Bank Manager was examined as P.W.2. On the side of the respondent/accused one Sivasankaran was examined as D.W.1 and one Saravana babu was examined as D.W.2.

6. According to the respondent/accused, D.W.1 Siva Sankaran along with the complainant and one other person were running a partnership business of Scan centre at Chennai. While so, under D.W.1, the accused/respondent was working as PRO. After some time, since the business was not went on well, as it was running in loss, they decided to close the business. In the mean while, some mis-understanding arose between D.W.1 and the complainant. In this regard, it seems that a police complaint has been given against D.W.1 and there were some settlement reached between D.W.1 and the complainant, who are the partners of the business. Accordingly, they decided to part away with the partnership business and the partnership business of running scan centre was closed and the partnership between D.W.1 and the complainant was dissolved. Subsequently, in order to divide the property available with the partnership firm among the partners ie., D.W.1 and the complainant, it is the case of the D.W.1 that, a sum of Rs.3,00,000/- would be given to the complainant as his share. It is the further case of the D.W.1 that, though the business was closed, the machinery were kept in idle. Therefore, the respondent/accused who had already been running a similar scan centre, wanted to purchase the machinery and accordingly, those machinery were sold to the accused for a sum of Rs.5,00,000/-.

7. It is the further case, as deposed by D.W.1 before the trial Court that, in order to pay an amount of Rs.5,00,000/-, the respondent/ accused had paid Rs.2,00,000/- by way of cash and for the remaining amount of Rs.3,00,000/-, the respondent/accused had given eight cheques each for the value of Rs.25,000/- and also given one more cheque for Rs.1,00,000/-. Out of the eight cheques given by the respondent/accused each for Rs.25,000/-, in order to pay the share of the complainant, four cheques for Rs.25,000/- each given by the accused person, had been given or made over to the complainant and the said cheque leaves of the accused for Rs.25,000/- each were handed over through the driver of D.W.1, who is none other than D.W.2, who has also deposed before the trial Court, corroborating the said defence theory projected by the respondent/accused through D.W.1.

8. It is further case of the accused, as established through D.W.1 that, out of the four cheques each for Rs.25,000/-, given by the accused, the appellant/complainant had misused three cheque leaves by making correction as Rs. 1,25,000/-, Rs.1,25,000/- and Rs.3,25,000/- and presented the same and on dishonor of those chques, he made a complaint against the accused. This case of the respondent/accused has been completely supported by D.W.1 and D.W.2, who had been examined before the trial Court.

9. These factors has been denied by the complainant, who deposed as P.W.1 before the trial Court and stating that though the partnership business was closed on 28.12.2011 and immediately the machinery were sold by D.W.1, the erst while partner of the complainant, to the accused for a sum of Rs.5,00,000/-, they have not made any agreement between them i.e, D.W.1 and accused. However, they came out with a case stating that after seven months, they entered into an agreement on 14.07.2012 and the said agreement between D.W.1 and the accused had been marked as document. Therefore, the trial Court did not accept the theory of the defence and the rebuttal made by the defence side rebutting the statutory presumption on the ground that three cheques, out of four cheques given by the accused, have been misused by the appellant/complainant. Accordingly, the trial Court, having rejected the rebuttal and defence theory, came to the conclusion that the appellant/complainant has proved his case beyond reasonable doubt and convicted the respondent/accused.

10. However, the first appellate Court by way of re-appreciating the evidence had taken the point that, when eight cheques were given each for Rs.25,000/- by the accused to D.W.1, none of the cheque leaves had been filled up except the amount in numbers and the signature of the accused. In other words, the said eight cheques had not been filled up by words in amount or date on which they were issued. This fact has been accepted by D.W.1 before the trial Court. More over, while giving four cheques, out of eight cheques given by the respondent/accused, to the complainant by D.W.1 through D.W.2, as they deposed before the trial Court, the following cheques numbers had been given to the complainant i.e, 868775, 868776, 868777 and 868778, each for Rs. 25,000/-. Out of these four cheques, three cheques ie., bearing Nos. 868775 to 868777 are the cheques in dispute. Whereas, it is the claim of the complainant that these cheques had been given by the accused directly to the appellant/complainant for a sum of Rs.1,25,000/-, Rs1,25,000/- and Rs.3,25,000/- totally for Rs.5,75,000/- towards the repayments of said loan allegedly advanced by the complainant.

11. However, the fact remains that, the cheque bearing number 868778 which is the last cheque among the four cheques claimed to have been given by D.W.1 to the complainant through D.W.2, was already encashed by the complainant for a sum of Rs.25,000/-. When this issue was raised, there is no plausible or acceptable reason given by the complainant that for what purpose or on what basis the cheque bearing No.868778 for a sum of Rs.25,000/- was encashed by the appellant/complainant. However, it is the definite case of the complainant that he lent a loan only for a sum of Rs.5,75,000/- for which the respondent/accused given three cheques bearing Nos. 868775 to 868777 and

there was no reason for the appellant/ complainant to encash the cheque No. 868778 for a sum of Rs.25,000/-.

12. Only in this aspect, the first appellate Court has re-appreciated the evidence and has come to the conclusion that the four cheques were given as claimed by D.W.1 through D.W.2 to the complainant for a total sum of Rs. 1,00,000/- as part of the amount payable by D.W.1 to the complainant for the share of the complainant out of the dissolution of the partnership firm. There is no alternative theory available before this Court except to accept the case of the accused, which is fully supported by D.W.1 and D.W.2. If at all, the case of the complainant is accepted by invoking provisions of 139 and 118 of Negotiable Instruments Act that once the issuance of cheque and signature was accepted by the accused, the statutory presumption is always in favour of the complainant, unless it is rebutted by acceptable defence, it cannot be presumed that the cheque has been given for the legally enforceable debt. The said theory is acceptable in this case that the last cheque namely cheque No.868778, since has been encashed for a sum of Rs.25,000/- admittedly by the complainant, for which no plausible explanation was made by the complainant's side, this Court, as has been rightly held by the first appellate Court, has accepted the rebuttal from the side of the respondent/accused and therefore, this Court finds that there is no illegality or perversity attached with the judgment of the lower appellate Court, which is impugned herein.

13. The law is well settled that in cases of Section 138 of the Negotiable Instruments Act, once the rebuttal is given and if that satisfies the degree of preponderance of probability, it is sufficient to draw a conclusion that acceptable rebuttal has been given by the respondent/accused's side. Therefore, the statutory presumption under Sections 118 and 139 of Negotiable Instruments Act being the rebuttable presumption, in this case, definitely such rebuttal was given by the respondent's side beyond any doubt. Therefore, accepting such rebuttal, the conviction and sentence given by the trial Court has been rightly reversed by the lower appellate Judge in the judgment impugned and therefore, this Court is of the considered view that the said judgment of the appellate Court is fully justified and needs no interference.

14. Accordingly, the Criminal Appeal is dismissed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The III Additional Sessions Judge,
Thiruvallur, Poonamalle.

2.do- Thro The Principal District Sessions Judge,
Thiruvallur.

3. The Fast Track Court (Magistrate level)
Poonamalle

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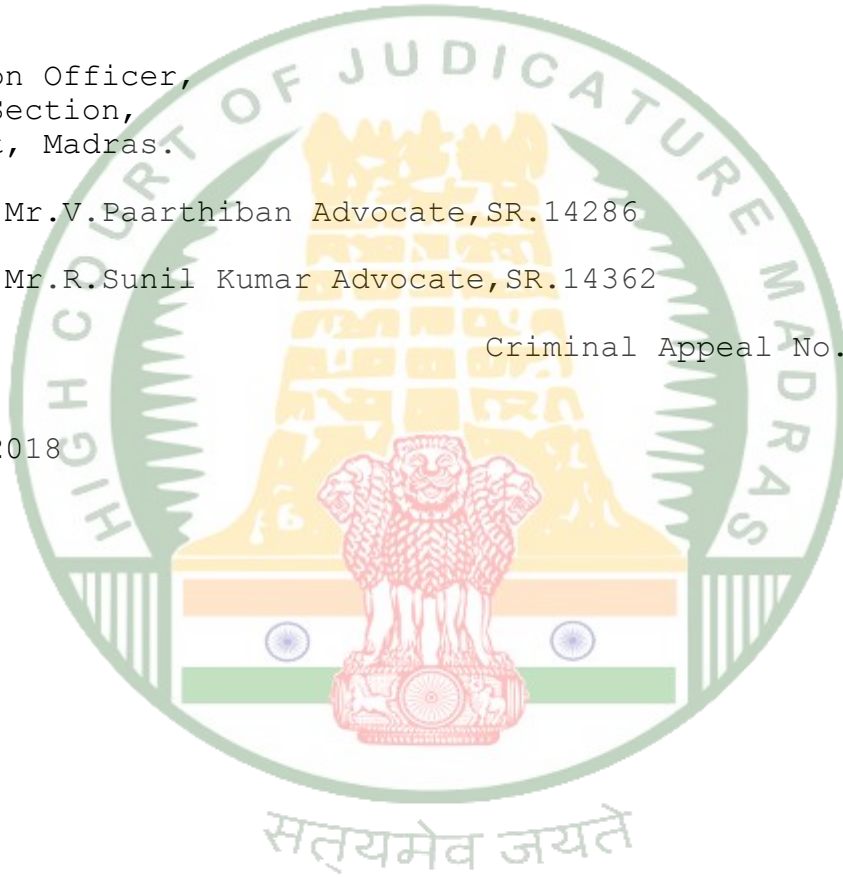
The Section Officer,
Criminal Section,
High Court, Madras.

+ 1 cc to Mr.V.Paarthiban Advocate,SR.14286

+ 1 cc to Mr.R.Sunil Kumar Advocate,SR.14362

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