IN THE HIGH COURT OF JUDICATURE AT MADRAS
Orders Reserved on : 11.04.2018
Orders Pronounced on : 01-08-2018
CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.320 of 2008

M/s.Sri Guruvayurappan Investments
Rep.by its Proprietor, Mr.K.Balan
No.156, Tiruvottiyur High Road, Chennai - 600 019.
Represented by this Power Agent
A.Sundaramoorthy. .. Appellant/Complainant

Versus

S.C.Rajagopal .. Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C, against the order passed by the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.7924 of 2004 on 27th February 2008

For Appellant : Mr. N. Baaskaran
For Respondent : Mr. Prabakar

JUDGMENT

This Criminal Appeal is filed against the order passed by the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.7924 of 2004 on 27th February 2008, acquitting the respondent herein under Section 138 of The Negotiable Instruments Act and also dismissing the claim for compensation made by the appellant herein under Section 357(3) of Cr.P.C.

2. The Appeal is against the acquittal. The private complainant is the appellant herein.

3. M/s. Sri Guruvayurappan Investments, represented by its proprietor Mr.K.Balan, through his Power Agent A. Sundaramoorthy has filed the private complainant before the learned XV Metropolitan Magistrate, George Town, Chennai under Section 138 of The Negotiable Instruments Act against the respondent herein. The respondent/accused borrowed a sum of Rs.2,85,000/- in cash and executed a promisory note dated 24.04.2004 in favour of the complainant agreeing to pay interest at 36% per annum. The complainant made repeated demands for repayment of the amount and on such demand, the respondent issued a cheque for Rs.3,00,000/- on 28.06.2004. On presentation of the cheque, the same was returned for want of funds and hence after issuing a legal notice dated 12.07.2004, the complainant filed the private complainant.

4. Before the Trial Court, the appellant herein examined his Power Agent as PW1 and marked Exs.P1 to P8. On behalf of the respondent/accused, he examined himself as DW1 and marked Ex.D1 to D7.

5. It is the specific case of the private complainant namely Sree Guruvayurappan Investments that the respondent herein has borrowed a sum of Rs.2,85,000/- on 24.04.2004 and agreed to repay the said amount with interest at 36% p.a., and executed a promissory note. On demand, he has issued Ex.P3 cheque for Rs.3,00,000/- on 28.06.2004 and on presentation, the same was dishonoured and after observing the legal formalities, the private complaint was filed.

6. Per contra, the respondent/accused took a specific stand that he never handed over any cheque to Guruvayurappan Investments limited. On the contrary, he subscribed for a chit through Guruvayurappan Chit Funds Private Limited and at the time of taking prized Chit amount, he has given the blank pro-note and two blank cheques and the same has been misused by the sister concern namely Guruvayurappan Investments Limited. Thus, the cheque issued to Sri Guruvayurappan Investments chit private Ltd. was misused by Guruvayurappan investments limited and filed the private complaint. Further, on 10.06.2004, when the respondent herein went to Ponneri Taluk office, certain cheques along with the RC Book of the vehicle were stolen and accordingly, he gave a complaint on 10.06.2004 to the Ponneri Police station and marked documents to that effect.

7. On consideration of both oral and documentary evidence, the Trial Magistrate come to a conclusion that initially the complainant is entitled for presumption under 139 Negotiable Instruments Act and in view of the answer illustrated in the cross examination by PW1 and the documents filed by the accused/respondent and in view of the certain answer regarding non production of statutory accounts books, the Trial Magistrate has drawn adverse inference against the appellant/private complainant and held that the respondent has rebutted presumption in a manner known to law. Therefore, it was held that the private complainant has not made out any case that cheque was issued for legally enforceable debt and accordingly dismissed the complaint and hence the appeal.

8. The learned counsel for the appellant would contend that the Trial Judge committed an error in not accepting the case of the private complainant having regard to the admission of factum of the signature in the pro-note and also in the cheque by the respondent. However, the Trial Court has relied upon the Non-traceable certificate issued by the Ponneri Inspector in Ex.B5 to dismiss the complaint.

9. Heard both sides and perused the records.

10. After perusing the records and also documents produced before the Trial Court, the learned Judicial Magistrate has come to conclusion that the private complainant/appellant is entitled for initial presumption in his favour on the ground that the respondent herein has accepted the signature in the pro-note as well as in the Cheque. During the cross examination of the PW1, he had categorically admitted that he is not having any books of accounts in spite of alleged lending amount of

Rs.2,85,000/- to the respondent as projected by him in the private complaint. He also admitted in the cross examination that he takes part in the business of Guruvayurappan Chit Funds Private Limited and he used to obtain cheque and pro-note as security for the prized chit amount from the subscribers.

11. It remains to be stated that in order to substantiate the suggestive case of the defence, the respondent has marked Ex.D1, Ex.D2 and Ex.D3 issued by the Sree Guruvayurappan Chit Funds Private Limited to show that he was a member of a chit group and he also taken a chit prized amount. It is the specific case of the respondent that at the time of taking the prized chit amount, he has handed over two blank pro-note and two cheques signed by him and the same was misused by the private complainant/appellant herein. At this juncture, it is pertinent to note that PW1 in his cross examination has admitted that he has not maintained any books of accounts for the amount lend to the respondent to the tune of Rs.2,85,000/- and accordingly the Trial Court has disbelieved the allegations of PW1 and the same cannot be found fault with.

12. Yet another point is that as per the Ex.B2 and Ex.B3 given before the Ponneri Town Police Station, the respondent was in possession of 53 cheque leaves and they were lost during transit to Ponneri Town Panchayat office from the car and even after diligent search, same could not be traced and hence, he has given a complaint to the police station. After investigation, a non traceable certificate was issued. It remains to be stated that Ex.B4 and B5 were prior in time and much before filing of this case, in fact immediately after the missing of the signed cheques. It is also brought on record during the evidence of PW1 that one of the Cheque, which is said to have been missing or stolen is covered under Ex.B3, it appears. Private complaint is lodged and a cheque case was filed before Kerala Court in C.C.No.994 of 2007 by none other than one of the relative of the private complainant herein, assumes significance. At this juncture, the Trial Court has drawn adverse inferences against the private complainant for non production of statutory accounts books to show alleged lending of Rs.2,85,000/- and also taken note of Ex.B4, the police complaint which was given immediately after the alleged missing of cheques is well founded and the same does not call for any interferrence. Yet another point is that for Ex.A6, legal notice issued on behalf of the appellant. It appears that the respondent also gave a reply notice under Ex.B7, which was also duly served upon the private complainant and however, for the reasons best known to the private complainant, he has stated in the private complaint as if the respondent herein did not send any reply notice. In Ex.B6, It is the specific case of the respondent/accused that the cheques were issued to Sri Guruvayurappan Chit Funds Private Limited and no cheque was issued to the appellant firm. Further, as per Ex.D4 and D5 complaint and Non-traceable Certificate and the deposition of PW1 and the suppression of issuance of reply notice, Ex.D6 and acknowledgment, Ex.D7, in the complaint it creates grave suspension over the genuineness of the claim of the private

complainant/appellant herein.

13. Taking into account the entirety of the circumstances into consideration and also taking into note of the fact that the cheque in issue and also cheque in C.C. No. 994 of 2007 filed before the Kerala Magistrate Court by the relative of the appellant and also taking note of Ex.B5 and B6, the Trial Court has come to the right conclusion that the respondent has successfully rebutted the presumption and same is hereby confirmed.

14. In this regard, it is to be stated that the standard of proof that is required to discharge the onus of proofs, on the accused is not as that of the prosecution and the standard of evidence that is to be adduced by the defendant to rebut the presumption under Section 139 of the Negotiable Instruments Act is that of the preponderance of the probability either through direct or circumstantial evidence. For the said purpose, the learned counsel for the respondent/accused also relied upon the evidence adduced by the complainant. Further, in support of his case, reliance was placed in the said decision in the case of M.S.Narayana Menon Alias Mani Vs. State of Kerala and another, reported in (2006) 6 SCC 39, wherein it is held that the standard of evidence that is required for the accused to rebut the presumption is the preponderance of probability. In the instance case by adducing oral evidence and the documents Ex.B5 and B6 and also by eliciting answer in the cross examination of the PW1 that no statutory accounts books are produced by Sri Guruvayurappan Investments Limited / appellant and also the fact the another cheque, which is also found to be misusing by the respondent at the earliest point of time was used by a relative of the complainant to file a private complaint before the Kerala Court, and thereby the respondent has rebutted the presumption by adducing clear and cogent evidence. Further, taking note of non production of statutory books of accounts and non explanation of PW1 regarding the reply notice given by the accused, the Trial Court has rightly come to the conclusion that the respondent has not issued the cheque in question for any legally enforceable debt. Accordingly, the trial Court has acquitted the accused. The said order does not require any interference and the same is hereby confirmed. The criminal appeal is devoid of merits and accordingly, the same is dismissed and the order passed in C.C.No.7924 of 2004, dated 27.02.2008 by the learned XV Metropolitan Magistrate, Court is hereby confirmed. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

The XV Metropolitan Magistrate,
George Town, Chennai.

+1 cc to Mr.N.Baaskaran, Advocate SR.NO.52559

Pre-Delivery order in
Crl.RC.No.320 of 2008

SV(CO)
SMI/23.08.2018