IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.A.No.642 of 2007

Mariappan ... Appellant/Complainant

Vs.

1.Selvamani

2.Selvaraj ... Respondents/Accused

PRAYER:- Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, against the judgment dated 14.05.2007 made in C.C.No.294 of 2002, on the file of the Judicial Magistrate No.II, Mettur.

For Appellant : No appearance
For Respondents: Mr.S.Doraisamy

J U D G M E N T

This Criminal Appeal has been filed by the complainant against the judgment dated 14.05.2007 made in C.C.No.294 of 2002, on the file of the Judicial Magistrate No.II, Mettur.

2. The appellant herein has filed a complaint stating that the respondents herein borrowed a sum of Rs.4,50,000/- from him as hand loan on 01.06.2002 for their Hotel and other business and promised to repay the same within ten days. Inspite of the repeated demands, the respondents herein did not repay the said amount. At last, they have issued a cheque dated 09.06.2002, in favour of the appellant for a sum of Rs.4,50,000/-. At the request of the respondents, the appellant presented the said cheque in the Bank for encashment on 25.10.2002. The said cheque was returned on 25.10.2002 itself with an endorsement “funds insufficient”. Thereafter, the appellant has issued a statutory notice on 09.11.2002, calling upon the respondents to pay the amount within 15 days from the date of the said notice. The first respondent received the said notice on 11.11.2002 and the second respondent received the notice on 13.11.2002, but, they did not make any payment. On the contrary, they have sent a reply notice dated 20.11.2002 with false averments. Hence, the appellant has filed a complaint to punish the respondents herein under Section 138 of the Negotiable Instruments Act. For the

sake of convenience, the parties are referred to as described before the Trial Court.

3. Based on the said complaint, the learned Judicial Magistrate No.II, Mattur, has taken the case on file in C.C.No.294 of 2002 and issued summons to the accused. On appearance of the accused, copies were furnished. They were questioned with regard to the offence said to have been committed by them. They denied the offence and pleaded not guilty and thereafter, the learned Judicial Magistrate has tried the case.

4. The evidence on the side of the complainant is in brief as follows:-

P.W.1 Mariappan (complainant) has stated that the accused persons are running Hotel in the name of Lavanya and also they are running a Textile Shop. He further stated that on 01.06.2002, the accused Nos.1 and 2 borrowed a sum of Rs.4,50,000/- from him and with a view to discharge the said loan, the accused persons have issued a cheque for Rs.4,50,000/- dated 09.06.2002. The said cheque has been marked as Ex.P1. He further stated that he presented the said cheque in the Bank on 25.10.2002 for encashment. The said cheque was returned with a Bank memo (Ex.P2) as “funds insufficient”. On 09.11.2002, he has issued a statutory notice to the accused. A copy of the said notice has been marked as Ex.P3. The accused Nos.1 and 2 have received the said notice and postal acknowledgements have been marked as Exs.P4 and P5 respectively. After the receipt of the said notice, the accused did not make any payment. On the contrary, they sent a reply notice (Ex.P6) with false averments. The memo which was issued by the accused Bank (Canara Bank) has been marked as Ex.P7. Since the accused did not make any payment, the complainant has filed a complaint to punish the accused under Section 138 of the Negotiable Instruments Act.

5. P.W.2 Thiru.Ravi has deposed that he was working as Manager in Indian Bank, Mecheri and he further stated that Ex.P1 came to his Bank for collection and he forwarded the said cheque to the Canara Bank, Alagapuram Branch, Salem and the said Bank returned the said cheque with Ex.P7 memo as “funds insufficient”. Accordingly, he has returned the said cheque with Bank memo (Ex.P2). He has produced the accounts sheet and marked the same as Ex.P8.

6. P.W.3 Thiru.K.Masilamani has deposed that he was working as Officer in Canara Bank, Alagapuram Branch, Salem. He further stated that the accused persons are having account in his Bank in the name of Lavanya Hotel. He further stated that Ex.P1 cheque was issued by his Bank to the accused Nos.1 and 2 and the same came to his Bank on 09.06.2002, for collection. He further stated that on that date, there was no sufficient funds on the

account of the accused persons and Hence, the bank has returned the said cheque with Ex.P7 memo. He has produced the authorisation letter issued to him by the Bank for giving evidence and marked as Ex.P9.

7. The evidence on the side of the complainant was closed with P.W.3. Thereafter, the accused was questioned under Section 313 of Cr.P.C, with regard to the incriminating circumstances found in the evidence of the complainant's side witnesses. The accused denied them as false. The accused No.1 was examined as D.W.1; one Kannan was examined as D.W.2 and accused No.2 was examined as D.W.3.

8. The D.Ws.1 and 3 have stated that they have not borrowed any amount from the complainant. They further stated that they have borrowed loan from one finance company viz., MRS Finance, which was functioning at Mattur Dam in which one Advocate Mr.Devarajan was also a partner. They further stated that the said Advocate was engaged by them for conducting their cases and due to such relationship, the said Advocate made arrangements for getting loan of Rs.1,00,000/- from the said finance, but, at that time, they got blank cheques and other documents. They further stated that they have paid interest to the said finance through the said Advocate Mr.Devarajan and got receipt. They further stated that subsequently, they have discharged the said loan to the said finance, but, due to the dispute arose between the partners of the said finance, the said Advocate has filled up one of the blank cheques in the name of the complainant and filed a false case.

9. D.W.2 has stated in his evidence that he is working as Bill Collector in Mettur Municipality. He further stated that within the municipal limit of Mattur Dam, no Hotel is running in the name of Lavanya Hotel.

10. The evidence on the side of the accused was closed with D.W.3 and thereafter, the learned Judicial Magistrate after hearing both sides and after considering the materials placed before her, has found that the complainant failed to prove that the Ex.P1 cheque was issued for discharging the debt and accordingly, she acquitted the accused. Aggrieved by the same, the complainant has preferred this appeal.

11. Today, when the matter was taken up for hearing in the morning, no representation for the appellant. Hence, the matter has been passed over and taken up at 2.15 p.m. At that time also no representation on behalf of the appellant. Hence, after hearing the arguments of the learned counsel for the respondents/accused and perusing the records, the judgment is being passed.

12. The points for consideration are as follows:-

1. Whether the learned Judicial Magistrate was right in acquitting the accused?
2. Whether this appeal has to be allowed?

13. Point Nos.1 and 2:-

The case of the complainant is that on 01.06.2002, the accused persons borrowed a sum of Rs.4,50,000/- as hand loan and with a view to discharge the said loan, they have issued Ex.P1 cheque. The Trial Court has observed in its judgment that admittedly the complainant and the accused were not relatives or family friends and that being so, the contention of the complainant that he had lent a huge amount of Rs.4,50,000/- to the accused without obtaining any document, cannot be believed. P.W.1 has stated in his evidence that he has conducted a case through the Advocate Mr.Devarajan, likewise, the accused persons also conducted their cases through the said Advocate and on that account, the accused were known to him. So, merely because the accused were known to him when they were coming to the Advocate's office, he has lent a huge amount of Rs.4,50,000/- without obtaining any documents, is highly unbelievable.

14. P.W.1 has stated in his evidence that the accused asked money only in the Advocate's office. He has also stated that for conducting the present criminal case, he was coming to the Court along with the Advocate Mr.Devarajan. The case of the accused is that they have conducted some other cases through the Advocate Mr.Devarajan. Their further case is that the said Advocate was a partner in one finance namely MRS Finance and he made arrangement for getting a loan of Rs.1,00,000/- from the said finance and at that time, he got blank cheques from them and subsequently, due to the dispute arose between the partners, the said Advocate Mr.Devarajan has filled up one of the cheques in the name of the complainant and filed the present case. P.W.1 also admitted in his evidence that the present case has been conducted on his behalf by the Advocate Mr.Manoharan and Mr.Devarajan. When the accused persons specifically made allegations against the Advocate Mr.Devarajan and the said Advocate is also conducting the case on behalf of the complainant, the complainant ought to have examined him as witness to disprove the allegations made by the accused persons against the said Advocate Mr.Devarajan. But, the complainant has not examined the said Advocate Mr.Devarajan as witness and hence, the Trial Court has rightly drawn an adverse inference against the complainant.

15. It is also to be pointed out that P.W.1 has stated in his evidence that a day before giving loan to the accused, he has withdrawn a sum of Rs.4,00,000/-from his Bank account. He has not stated from which Bank he withdrawn the amount of Rs.4,00,000/-. The evidence of P.W.2 (Manager) would show that

only on 10.10.2002, the complainant has opened an account in his Bank by paying Rs.250/- and thereafter, no transaction took place in the said account. The complainant has not stated that he is having account in any other Bank. He has not produced any Pass Book to show that he has withdrawn a sum of Rs.4,00,000/-, a day before giving loan to the accused persons. So, it has to be presumed that the complainant was having account only in P.W.2's Bank and the said account was opened only on 10.10.2002 by depositing a sum of Rs.250/- only. Under the said circumstances, the contention of the complainant that he has withdrawn a sum of Rs.4,00,000/- from his Bank account and the same was paid to the accused persons on the next day, cannot be accepted.

16. Under Section 139 of the Negotiable Instruments Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, if any debt or other liability. The accused can rebut the said presumption even by relying upon the evidence of the complainant. In this case, the complainant has not produced any evidence to show that he is having capacity to pay the huge amount of Rs.4,50,000/-. Further, inspite of the specific allegations made by the accused against the Advocate Mr.Devarajan and the said Advocate, as per the evidence of P.W.1, is also conducting the case of on behalf of the complainant, the complainant has not examined the said Advocate as witness to disprove the allegations made by the accused.

17. Taking into consideration all the aforesaid circumstances, the Trial Court, came to the conclusion that the accused has successfully rebutted the aforesaid presumption and accordingly, acquitted the accused. This Court is of the view that the findings of the Trial Court is not perverse. Therefore, the appeal is liable to be dismissed.

18. In the result, the Criminal Appeal is dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Mettur.

2. Thro The Chief Judicial Magistrate
Salem.

3.The Public Prosecutor,
Madras High Court,
Chennai.

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VGII(CO)
SP(13/07/2018)