

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2016

PRONOUNCED ON : 27.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl. Appeal No.254 of 2013

P.Natarajan

... Appellant/Complainant

Vs.

K.Parimalachelvan

... Respondent/Accused

Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure to set aside the order of acquittal passed in S.T.C.No.100 of 2010 dated 21.01.2013 on the file of the learned Judicial Magistrate, Tiruvarur.

For Appellant : Mr.M.L.Ramesh

For Respondent : No Appearance

J U D G M E N T

The present appeal has been filed by the appellant against the order of acquittal passed in S.T.C.No.100 of 2010 dated 21.01.2013 by the learned Judicial Magistrate, Tiruvarur under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the appellant/complainant is as follows:

(i) The complainant/appellant is a retired Revenue Divisional Officer, residing at Tiruvaur taluk. The respondent/accused is one of the Committee Members of the Viduthalai Siruthaigal Katchi at Nagapattinam and he is a distant relative of the appellant. The appellant informed the respondent that he wish to buy a house at Nagapattinam from his retirement benefits. Accordingly, the respondent, on 20.04.2009, approached the appellant and stated that instead of buying a house at Nagapattinam, he may buy a place consisting of 74665 sq.ft. at Nagapattinam E.C.R Road, which is owned by the South Indian Fishermen Federation. Since the respondent is a distant relative of the appellant, for purchase of the said land, they agreed to invest a sum of Rs.5,05,000/- each to execute a sale agreement. On believing the words of the

respondent, on 20.04.2009, the appellant gave Rs.5,05,000/- by way of cash. After receiving the said amount, the respondent has not executed any sale agreement in respect of purchase of the place. Later, the appellant, on coming to know that the respondent is a fraud and he is a habitual cheater and cheated many persons by using the name of the political party namely, Viduthalai Siruthaigal Katchi. Hence, he has written a letter dated 25.07.2009 to the respondent to repay the amount of Rs.5,05,000/-. On receiving the said letter, the respondent came to the house of the appellant and told that as there was a problem, delay was caused in repaying the amount and he spent Rs.5,000/-. Hence, he will repay Rs.5,00,000/- after deducting the expenses of Rs.5,000/- and for which, he issued Ex.P.3, cheque bearing No.683398 in respect of A/c No.609401017201 dated 05.08.2009 drawn on I.C.I.C.I. Bank for Rs.5,00,000/-. When the appellant presented the cheque for collection on 05.08.2009 in State Bank of India, the same was returned with an endorsement "Funds insufficient" on the same day.

(ii) On the contrary, the respondent sent a legal notice dated 05.08.2009 stating that the appellant received Rs.5,00,000/- from him on 03.01.2009 and Rs.1,00,000/- on 10.02.2009 and accepted to repay the total amount of Rs.6,00,000/- in two instalments. Accordingly, the appellant gave Rs.1,00,000/- on 23.03.2009 and Rs.50,000/- on 14.04.2009 in two installments in the presence of one Pushparaj and he assured that he will repay the remaining amount of Rs.4,50,000/- within one month. But, the respondent, on 10.08.2009 met the appellant in his house and informed that without his knowledge, his brother-in-law only sent the legal notice before two months, and requested him to give two months time to repay the due amount. Accordingly, the appellant presented the cheque on 04.11.2009 at Thaico Bank, Thiruvarur and again it was returned due to insufficiency of funds on 05.11.2009. In such circumstances, the respondent again on 12.11.2009 sent two other legal notices to the appellant. The appellant sent another legal notice dated 18.11.2009 to the respondent giving 15 days time to repay the said amount, for which, the respondent sent Ex.P.11, notice dated 03.12.2009 to the appellant. Therefore, the appellant preferred the complaint before the learned Judicial Magistrate, Thiruvarur under Section 138 of the Negotiable Instruments Act, 1881. The Court below after taking cognizance of the offence, took the complaint on file.

(iii) In order to prove the case of the appellant, he himself examined as P.W.1 and marked the documents as Exs.P.1 to P.12.

(iv) Since the matter was pending before the Court

below, when the above incriminating materials were put to the respondent/accused under Section 313 Cr.P.C., the respondent denied the same as false. However, in order to prove his case, he did not examine any witness, but he marked 7 documents as Ex.D.1 to D.7.

(v) The learned trial Judge, after considering the entire records and the submissions made by the learned counsel on either side, by judgment dated 21.01.2013 in S.T.C.No.100 of 2010 dismissed the complaint and acquitted the accused. Aggrieved by the acquittal of the respondent/accused, the present Criminal Appeal has been filed by the appellant.

3. The learned counsel for the appellant submitted that the appellant gave a sum of Rs.5,05,000/- to the respondent to purchase 42 plots by executing a sale deed. Later, the respondent approached the appellant and stated that he has spent Rs.10,000/- towards expenses and hence, he will repay only Rs.5,00,000/- and for which, he issued Ex.P.1, the cheque bearing No.683398 in respect of A/c. No.609401017201 dated 05.08.2009 drawn on I.C.I.C.I. Bank. When the said cheque was presented for collection in State Bank of India, the same got dishonoured for the reason "funds insufficient" on the same day. Though the respondent has not given the amount, he issued a legal notice to the appellant stating that the appellant received Rs.5,00,000/- and Rs.1,00,000/- from him on 03.01.2009 and on 10.02.2009 respectively and accepted to repay the total amount of Rs.6,00,000/- in two instalments. But, on 10.08.2009, he requested the appellant that he will give the amount after two months and without his knowledge, his brother-in-law, mistakenly, issued a legal notice. Again, when the appellant presented the cheque on 04.11.2009 for collection in Thaico Bank, Thiruvavarur the same was returned on 05.11.2009. Hence, the appellant filed a complaint before the learned Judicial Magistrate, Tiruvavarur.

4. The learned counsel for the appellant further submitted that the trial Court failed to see that the presumption under Section 139 of the Negotiable Instruments Act, 1881 had not been rebutted by the respondent under Section 118 and 139 of the Negotiable Instruments Act, 1881. He also failed to see on the basis of trust, the appellant gave Rs.5,05,000 and the cheque has been issued to clear the legally enforceable debt. As the respondent has committed an offence under the provisions of the Negotiable Instruments Act, 1881 he has to be convicted under the said Act. The learned trial Judge, without considering the evidence submitted by the appellant, erroneously acquitted the respondent. Hence, the judgment passed by the learned Magistrate is unsustainable either in law or on facts and the same is liable to be set aside and the respondent shall be

convicted and direct him to pay the compensation amount.

5.Heard Mr.M.L.Ramesh, learned counsel for the appellant and perused the materials available on record.

6.When the matter was taken up for hearing on 21.10.2016, though notice was duly served on the respondent, none appeared on behalf of him. But, the learned counsel for the appellant was present and ready to argue the matter. For giving one more chance to the respondent, the matter was adjourned to 07.11.2016. When the matter was called on that day, again there was no representation for the respondent though his name was printed in the cause list. Hence, the case is taken up for disposal on the basis of the submission made by the appellant and the perusal of the documents available on record.

7.On a perusal of the judgment passed by the learned Judicial Magistrate, Tiruvarur, it is seen that the learned trial Judge had a doubt as to whether there is a material contradiction in the evidence and found that the appellant has not established his case beyond reasonable doubt. When there are two views possible, one in favour of the respondent/accused and the other in favour of the appellant/complainant, the view favouring the respondent should be taken into consideration. Accordingly, the learned trial Judge dismissed the complaint and acquitted the accused.

8.It is the specific case of the appellant that he wish to buy a house at Nagapattinam from his retirement benefits and he informed the same to the respondent, who is his distant relative. Accordingly, the respondent met the appellant and stated that instead of buying the house, they may buy a place of an extent of 74,665 sq.ft. at Nagapattinam E.C.R. Accordingly, they invested Rs.5,05,000/- each to execute an agreement of sale. Pursuant to the same, the appellant gave a sum of Rs.5,05,000/- to the respondent. But, the respondent failed to execute any sale deed. Hence, the appellant wrote a letter dated 25.07.2009 to the respondent. On receiving the same, the respondent issued a cheque namely, Ex.P.3, cheque bearing No.683398 in respect of A/c.No.609401017201, dated 05.08.2009 drawn on I.C.I.C.I. Bank for Rs.5,00,000/-. When the appellant presented the cheque for collection on 05.08.2009 in State Bank of India, the same was returned with an endorsement "Funds insufficient" on the same day. The respondent issued Ex.P.5, legal notice dated 05.08.2009 stating that the appellant received Rs.5,00,000/- and Rs.1,00,000/- from him on 03.01.2009 and on 10.02.2009 respectively and accepted to repay the total amount of Rs.6,00,000/- in two instalments. But, the respondent, on 10.08.2009 informed the appellant that without

his knowledge, his brother-in-law only sent the legal notice before two months and requested him to give two months time to repay the due amount. Accordingly, the appellant presented the cheque on 04.11.2009 at Thaico Bank, Thiruvarur and again it was returned as insufficiency of funds on 05.11.2009, Ex.P.6. In such circumstances, the respondent again on 12.11.2009 sent another two legal notices, Exs.P.7 and P.8 to the appellant. Hence, the appellant sent another legal notice dated 18.11.2009, Ex.P.9 to the respondent giving 15 days time to repay the said amount. The respondent without repaying the said amount, sent Ex.P.11, notice dated 03.12.2009 to the appellant. Hence, he made a complaint before the learned Judicial Magistrate, Tiruvarur. In order to prove the case, the appellant himself examined as P.W.1 and marked 12 exhibits.

9.The letter dated 25.07.2009 wrote by the appellant is marked as Ex.P.1. The postal acknowledgment card is marked as Ex.P.2. The cheque bearing No.683398 dated 05.08.2009 drawn on I.C.I.C.I. Bank is marked as Ex.P.3. The Memo dated 05.08.2009 issued by the State Bank of India is marked as Ex.P.4. The legal notice dated 05.08.2009 sent by the respondent is marked as Ex.P.5. The Memo dated 05.11.2009 issued by the Thaico Bank is marked as Ex.P.6. The legal notices dated 12.11.2009 sent by the respondent are marked as Ex.P.7 and Ex.P.8. The legal notice dated 18.11.2009 sent by the appellant to the respondent is marked as Ex.P.9. The acknowledgment card is marked as Ex.P.10. The reply notice dated 03.12.2009 issued by the respondent to the appellant is marked as Ex.P.11. The Statement of Accounts dated 22.03.2011 issued by the State Bank of India is marked as Ex.P.12.

10.It is seen from the evidence of P.W.1 that the respondent met the appellant on 20.04.2009 and received Rs.5,05,000/- for purchasing the place at Nagapattinam E.C.R. Later, since he came to know that the respondent is a fraud, he wrote a letter dated 25.07.2009 to repay the amount. The respondent met the appellant on 01.08.2009 and gave a cheque bearing No.683398 in respect of A/c.No.609401017201 dated 05.08.2009 drawn on I.C.I.C.I. Bank for Rs.5,00,000/- after deducting the expenses of Rs.5,000/-. When the said cheque was presented for collection, it was returned with an endorsement "funds insufficient". But, on the contrary, the respondent sent a notice stating that the appellant has received Rs.5,00,000/- on 03.01.2009 and Rs.1,00,000/- on 10.02.2009 as loan and returned Rs.1,50,000/- and the balance amount of Rs.4,50,000/- has to be paid within one month. But, the respondent met the appellant on 10.08.2009 and requested two months time to repay the amount. Hence, the appellant presented the cheque on 05.11.2009 and the same was returned as "funds insufficient".

11. But, in cross examination, the appellant has stated that after analysing the land documents only he gave Rs.5,05,000/- to the respondent and he has not filed any documents before the Court below. If he sees Paramanandam and Kalaiarasan, who are brother-in-law and brother of the respondent, he can identify them. He knows one Thirumavalavan, who is the brother-in-law of the respondent in respect of money transaction. As the said Thirumavalavan cheated the appellant Rs.2,50,000/- in respect of land business, the appellant gave a complaint against him. He further stated that on 30.03.2009, himself and the said Kalaiarasan executed a sale agreement with one person. On the same day i.e. on 30.03.2009, the appellant, the said Paramanandam and one Indirani executed yet another sale agreement. He also obtained Power of Attorney in respect of Survey Nos.165/1 and 165/4.

12. It is seen from Ex.P.5 that on 03.01.2009, the appellant received Rs.5,00,000/- from the respondent in the presence of the witnesses, without giving any document and on 10.02.2009, the appellant further received Rs.1,00,000/- and thereafter, the respondent received Rs.1,00,000/- on 22.3.2009 and Rs.50,000/- on 14.04.2009.

13. Ex.P.6 reveals that the cheque bearing No.683398 has been returned on 05.11.2009 with an endorsement "Insufficient funds".

14. It is seen from Ex.P.7 that the respondent along with the appellant and others are jointly carrying on the real estate business. At one point of time, the appellant took the respondent's ICICI Bank cheque leaf and forged the same by filling up of Rs.5,00,000/-. The respondent came to know the said fact on 04.11.2009 when it was returned with an endorsement "Insufficient of funds" and he has no money transaction with the appellant.

15. Moreover, it is known from Ex.P.1, complaint that on 20.04.2009, the respondent met the appellant and agreed to buy a place consists of 74,655 sq.ft. and they agreed to execute a sale agreement by investing Rs.5,05,000/- each. Accordingly, the appellant gave Rs.5,05,000/- on 20.04.2009. But, the appellant nowhere either in complaint or in his evidence stated that he has received any kind of document for giving Rs.5,05,000/- and he has failed to prove the same.

16. It is seen from Exs.D.5, D.6 and D.7 that one Indirani agreed to sell the land to Natarajan, the appellant, Anbazhagan, Paramanandam and Kalaiarasan for total amount of Rs.34,50,000/- and they received Rs.8,50,000/- from the said

Indirani on 26.03.2009 and 30.03.2009. Hence, the appellant can give only his share amount of Rs.2,82,000/- to the appellant. Hence, it is stated by the appellant in the complaint that he gave Rs.5,05,000/- to the respondent, which is unbelievable and to prove the same, he has not placed any evidence anywhere with regard to the same.

17. On a perusal of Ex.P.12, the Statement of Accounts given by the State Bank of India, it is seen that at no point of time, the appellant was having cash balance of Rs.5,00,000/- in his account.

18. In cross examination, the appellant has stated that if he sees Paramanandam and Kalaiarasan, who are brother-in-law and brother of the respondent, he can identify them and he has no business transaction with them. Further, in his cross examination, on the contrary, while producing Exs.D.5, D.6 and D.7 before him, he has stated that himself along with Paramanandam and Kalaiarasan have executed agreements of sale with one Indirani. Likewise, while producing Exs.D.2, D.3 and D.4 he has stated that there was a compromise between himself and Thirumavalavan, which has been given contrarily in the complaint. Hence, there is material contradiction in the evidence.

19. It is seen that the appellant has not given any reply for Ex.P.5, notice, wherein it is stated that the appellant received Rs.5,00,000/- from the respondent in the presence of the witnesses, without giving any document and on 10.02.2009, the appellant further received Rs.1,00,000/- and thereafter, the respondent received Rs.1,00,000/- on 22.3.2009 and Rs.50,000/- on 14.04.2009.

20. Secondly, it is seen that the appellant has not given any notice when the cheque was dishonoured.

21. Thirdly, the trial Court, while analysing the cheque, has found that the ink of the name and signature and the ink of the amount and date are different. The difference found in the cheque i.e. the ink of name and signature and the amount and date are also presumed to be in favour of the respondent. Therefore, the appellant has not established his case. Hence, the trial Court found that the respondent is entitled for acquittal and there is no need to interfere with the judgment passed by the Court below.

22. In a criminal case, it is not necessary for the respondent/accused to disprove the case of the prosecution beyond reasonable doubt. If the respondent is able to satisfy the Court by legally acceptable defence that the case of the

prosecution lacks bona fide, the respondent will be entitled to the benefit of doubt.

23. In this case, the trial court has considered all the above aspects and has held that the appellant had failed to prove the case against the respondent beyond reasonable doubt.

24. Further, when there are two views possible, one in favour of the respondent/accused and the other in favour of the appellant/complainant, the view favouring the respondent/accused should be taken into consideration in an appeal against acquittal.

25. Hence, I find no merit in the appeal against the impugned judgment of the trial Court. I find no reason to interfere with the order of acquittal passed by the trial Court. Therefore, the appeal fails and the same deserves to be dismissed.

26. In the result, the criminal appeal is dismissed. The judgment dated 21.01.2013 made in S.T.C.No.100 of 2010 by the learned Judicial Magistrate, Tiruvarur is confirmed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

cla/tsh

To

1. The Judicial Magistrate, Tiruvarur.

Copy To

1. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.L.Ramesh, Advocate SR.No.58318

+1cc to Government Pleader SR.No.

Cr1.A.No.254 of 2013

GMV (14/09/2018)