IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2018
PRONOUNCED ON : 25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.656 of 2006

Gnanasundaram(deceased)
G.Meena
L.Rs. of deceased Gnanasundaram ... Appellant/Complainant
(Cause title amended as per order
of this court dated 26.06.2009 in
MP.No.1 of 2008)

.. Vs ..

Sakthivel
Proprietor,
Sakthivel Associates,
No.39, D.Silva Road,
Mylapore, Chennai - 600 004. ... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 16.05.2006 made in C.C.No.782 of 2000 on the file of the learned Judicial Magistrate, Alandur, acquitting the respondent for the offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.G.Krishna Kumar
For Respondent : Ms.A.B.Reehana
Legal Aid Counsel

JUDGMENT

The complainant before the trial Court is the appellant herein. This Criminal Appeal is preferred against the order of acquittal dated 16.05.2006 passed by the learned Judicial Magistrate, Alandur, in C.C.No.782 of 2000.

2. The appellant herein has filed a private complaint under Section 138 of the Negotiable Instruments Act before the trial Court on the ground that the cheque issued by the respondent herein/accused for a sum of Rs.60,00,000/- was returned for want of funds and accordingly, he filed the private complaint and the same was taken on file by the learned Judicial Magistrate, Alandur, in C.C.No.782 of 2000.

3. It is the specific case of the appellant/complainant that on various dates, the respondent and his family members have received a sum of Rs.60,00,000/- from him and for which,

a cheque dated 04.11.2000 for a sum of Rs.60,00,000/- was given by the respondent/accused which was bounced and hence, the complaint.

4. During the trial, the suggestive case of the respondent/accused is that for raising funds, he has received a sum of Rs.24,72,000/- from the complainant by way of cheque and he denied the receiving of the balance amount of Rs.35,28,000/-. In order to avail loan from the private finance, by way of security, the appellant/complainant has given his land documents to the respondent/accused and for which, the respondent/accused gave a blank cheque-Ex.P.1 and blank papers signed by him to the complainant and the same were misused and fabricated by the complainant and based upon the same, the complaint was filed. Further, it is specifically denied that the appellant/complainant has no sufficient monetary means to lend a sum of Rs.60,00,000/- as claimed in the complaint.

5. During the trial, on behalf of the appellant/complainant, the complainant examined himself as P.W.1 and one Mr.Haran, Senior Manager of the Indian Bank was examined as P.W.2 and Mr.Subash, Branch Manager of HDFC Bank was examined as P.W.3 and documents Exs.P.1 to 14 were marked. On behalf of the respondent herein/accused, one Mr.Markabandhu, Income Tax Inspector was examined as D.W.1 and one Mr.Janakiraman, Assistant Commissioner of Income Tax Department, was examined as D.W.2. D.W.1-Inspector of Income Tax Department, Tambaram Range has deposed about the income returns filed by the complainant for the year 2000-2001.

6. On consideration of both oral and documentary evidence, the trial Court came to a conclusion that the blank cheque, which was originally given in the year 1999, was subsequently filled by the appellant herein/complainant. As admitted by P.W.1 in the cross-examination that the income tax returns filed for the years 1998-1999, 1999-2000 and 2000-2001, which are marked as Exs.P.6, P.7 and P.8 respectively, are subsequent to the chief examination of P.W.1 and hence, the trial Court has held that the complainant has not proved his means to lend the amount as stated in the complaint and dismissed the private complaint and hence, the criminal appeal.

7. Pending appeal, the appellant died and her daughter Meena was brought on record.

8. Learned counsel appearing for the appellant/complainant would contend that the trial Court has failed to consider the fact that the respondent/accused had borrowed amount and for the due repayment, he has issued a cheque which was marked as Ex.P.1 and the same was not denied by the respondent/accused. It is further contended that the trial Court has failed to consider that once the

respondent/accused accepted the issuance of the cheque, then there is a legal presumption that the cheque was issued for discharging an antecedent liability and here, the respondent/accused has failed to rebut the same. The learned counsel further submitted that the trial Court while came to a conclusion that the defence raised by the respondent/accused that the amount transacted between the complainant and the respondent is only book adjustment, but there is no evidence on the part of the respondent to prove that it is a book adjustment and also for what purpose the book adjustment was made. It is also contended by the learned counsel for the appellant/complainant that the trial Court has failed to consider the fact that the appellant marked the Income Tax Returns filed for the years 1999-2000 and 2000-2001 before the trial Court in order to substantiate that he had sufficient means to issue the cheque amount to the respondent. Further, the trial Court has failed to consider that in order to substantiate that the appellant had sufficient means to pay the balance amount of Rs,35,28,000/- to the respondent, had produced the Income Tax Returns for the years 1998-1999, 1999-2000, 2000-2001 and the same were marked as Exs.P.7 and P.8.

9. The learned legal aid counsel appearing for the respondent made submission in support of the judgment of the trial Court.

10. Heard both sides and perused the materials available on record.

11. Point for consideration is whether the order passed by the learned Judicial Magistrate, Alandur is sustainable in law.

12. After going through the evidence of P.W.1 and also the evidence of D.Ws.1 and 2, who are the revenue witnesses from income tax department, the trial Court came to the conclusion that Exs.P.6, P.7 and P.8 are filed before the income tax department belatedly for the respective financial years that too after the chief examination of P.W.1 assumes significance. Furthermore, the revenue witnesses D.Ws.1 and 2 from the income tax department have categorically stated that number of enclosures found along with the returns does not tally with the number of enclosures mentioned in the first page which creates doubt about the case of the complainant. As claimed by the appellant/complainant, as stated supra, the cheque amount is Rs.60,00,000/- and the suggestive case of the respondent/accused is that the appellant/complainant does not have means to lend Rs.60,00,000/-. It is admitted that a sum of Rs.24,72,200/- was given to the respondent and to his family members in various dates. However, the balance amount of Rs.35,28,000/- is being specifically disputed by the respondent herein. The further case of the respondent/accused is that for getting loan from the private financial institution, the original land documents of the

appellant/complainant were pledged by the respondent and for which, the respondent has given a blank cheque to the complainant in the year 1999 and the said cheque was subsequently filled up and presented for encashment by the complainant. P.W.1, in his cross-examination, has admitted that though the cheque was given in the year 1999, subsequently it was filled up and presented as per the instructions of the respondent in his presence. The evidence of P.W.1 during his cross-examination dated 28.11.2001 cannot be brushed aside slightly, which is not his case either in notice or in complaint or in chief examination. P.W.1 has introduced a new theory/case in his cross-examination.

13. As rightly pointed out by the trial Court, the admission of P.W.1 in the cross-examination that at the subsequent point of time, the blank cheque given by the accused has been filled up and presented and it is not forged by him creates serious doubt as to the case of the complainant. Therefore, the learned counsel for the respondent, based upon the admission of P.W.1 referred to above, would submit that the preponderance of probabilities that the blank cheque which was given in the year 1999 as security for the above said manner has been misused by the complainant and filled up and presented for encashment causes serious dent on the case of the appellant/complainant.

14. From the oral evidence of the revenue witnesses D.W.1 and D.W.2 coupled with the documents Exs.P.6 to P.8, which are the income tax returns filed for the years 1998-1999, 1999-2000 and 2000-2001 and though these returns have been filed and marked but admittedly, these income tax returns were filed by the appellant only after the chief examination as spoken to by the income tax officials D.Ws.1 and 2, and furthermore, in the annexures relating to the list of sundry debtors and credit debtors, there was a total discrepency with regard to the documents which were enclosed along with the said exhibits marked before the trial Court. As spoken to by D.W.1 and D.W.2 income tax officials that Ex.P.7 is filed belatedly and Ex.P.6 income tax return is an incomplete document and as stated by P.W.1, there was no annexure enclosing nine documents and since that being the evidence of D.W.1 and D.W.2, I am of the considered view that the alleged documents of income tax returns which were admittedly filed before the income tax officer belatedly and in view of the discrepancies mentioned in the list of enclosures and as per the statements of the income tax officials D.W.1 and D.W.2 the said documents Exs.P.6, P.7 and P.8 do not advance the case of the private complainant and the finding of the trial Court that the complainant has miserably failed to prove the means in respect of Rs.35,28,000/- is well founded and well merited which does not warrant any interference in the appeallate stage. Furthermore, the admitted fact that the income tax returns were filed during the pendency of the case that too after the examination of P.W.1 causes serious doubt as to the truth and

genuineness of the document.

15. Though P.W.1/complainant has undertaken to produce the books of account showing the alleged book transfer account, the trial Court has rightly drawn an adverse inference and held against the appellant herein/complainant and such a finding is based upon the conduct of P.W.1 namely, the appellant herein for non-production of account books and to substantiate the account transfer is sustainable in law which does not warrant any interference. Accordingly, all the three findings of the trial Court are well founded and the same are hereby confirmed. In the absence of any positive evidence to show that the appellant has means to pay a sum of Rs.60,00,000/- as claimed by the respondent and as he failed to prove the means in the manner known to law and the documents Exs.P.1 to P.8 are not in conformity with the legal scrutiny and hence, the appeal is devoid of merits and the same is liable to be dismissed.

16. In the result, the Criminal Appeal is dismissed and the order dated 16.05.2006 passed by the learned Judicial Magistrate, Alandur, in C.C.No.782 of 2000, is confirmed.

Sd/-
Assistant Registrar(CCC)
//True copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Alandur.

2.The Chief Judicial Magistrate,
Chengalpattu.

+1cc to Mr.G.Krishnakumar, Advocate SR.NO.49816

KJI(CO)
sm:21.8.2018

Judgment in
Crl.A.No.656 of 2006