



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.08.2018

Pronounced on 11.10.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.37 of 2014

P.Dhanam

.. Appellant

Vs

G.Arjunan

.. Respondent

PRAYER : Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order of acquittal dated 27.09.2013 made in C.A.No.19 of 2012 on the file of the learned II Additional Sessions Judge, Salem reversing the judgment dated 02.02.2012 made in STC No.737 of 2009 on the file of the Judicial Magistrate No.I, Sankari.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.R.Thirumoorthy
for Mr.S.Manokaran

J U D G M E N T

The Revision has been filed to set aside the order of acquittal dated 27.09.2013 made in C.A.No.19 of 2012 on the file of the learned II Additional Sessions Judge, Salem reversing the judgment dated 02.02.2012 made in STC No.737 of 2009 on the file of the Judicial Magistrate No.I, Sankari.

2.The case of the appellant is that the respondent borrowed a sum of Rs.2,96,000/- for the management of Amala Matriculation School on 23.03.2008, a sum of Rs.2 lakhs on 23.04.2008, a sum of Rs.3,50,000/- on 30.05.2008, a sum of Rs.2,54,000/- on 02.06.2008, a sum of Rs.1,00,000/- on 07.06.2008 and further sum of Rs.3,00,000/- on 09.06.2008, totally a sum of Rs.15 lakhs on the said dates and agreed to repay the said amount within 3 months. When the appellant approached the respondent and demanded the said sum on 12.09.2008, the respondent issued a post dated cheque dated 12.12.2008 of Indian Overseas Bank, Trichengode Branch bearing cheque No.602402 for a sum of Rs.15 lakhs. When the appellant



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presented the said cheque for collection on 24.12.2008 in his bank account (i.e.,) Lakshmi Vilas Bank, the said cheque was returned with an endorsement insufficient fund on 27.12.2008. Hence, the appellant issued a legal notice on 09.01.2009 and the said notice was received by the respondent on 15.09.2009. After receiving the notice, the respondent neither sent a reply nor repaid the amount mentioned in the notice. Thereafter, the appellant filed a complaint before the jurisdictional Magistrate for the offence under Section 138 of Negotiable Instruments Act. The learned Magistrate, after completing the legal formalities and after enquiry, found the respondent guilty under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year.

3. Aggrieved against the order of conviction, the respondent/accused filed criminal appeal before the Sessions Judge, Salem in turn made over the case to II Additional Sessions Judge, Salem in C.A.No.19/2012. After hearing the arguments on either side and perusing the materials placed before the appellate Court, the learned Additional Sessions Judge, set aside the judgment of conviction passed by the learned Magistrate and acquitted the respondent.

4. Feeling aggrieved against the said reversal judgment passed by the II Additional Sessions Judge, dated 27.09.2013, the complainant has preferred this criminal appeal before this Court.

5. The learned counsel for the appellant would submit that the execution of cheque was admitted and the signature found in the cheque also is admitted. Therefore, once respondent/accused admitted the execution of the cheque, it is a statutory presumption that the cheque was issued for legally enforceable debt or liability. It is for the accused to rebut the statutory presumption that the cheque was not issued for the legally enforceable debt or liability and further after receiving the statutory notice issued by the appellant, the respondent neither chosen to give any reply nor paid the amount demanded in the statutory notice. Even he has not sent any reply, the defence taken by him is only an after thought. Once the signature and execution of cheque is admitted, it is for the accused to rebut the presumption. In this case the accused has not rebutted the presumption. Therefore, the learned Magistrate rightly appreciated the evidence let in by the appellant/complainant and accepted the case of the appellant and convicted the respondent/accused. Whereas, the II Additional District Judge failed to consider the legal presumption that the execution of the cheque was admitted by the respondent herein and the legal presumption is in favour of the complainant that the appellant/complainant has proved the initial burden, the cheque was issued for legally enforceable debt or liability and



further the learned Additional Sessions Judge has failed to consider that the respondent/accused has not rebutted the legal presumption in the manner known to law. Therefore, the judgment of acquittal passed by the learned II Additional District Judge, Salem is without any merits and the same is in perverse and placed his reliance on the judgments of the Hon'ble Apex Court, which are as follows:-

- i) (1999) 3 SCC 35 (Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal)
- ii) CDJ 2016 SC 1007 (B.M.Basavaraj Vs. Srinivas S.Datta)
- iii) (2010) 3 Supreme Court Cases 83 (Mandvi Cooperative Bank Limited Vs. Nimesh B. Thakore) and
- iv) (2010) 11 Supreme Court Cases 441 (Rangappa Vs. Sri Mohan)

6.The learned counsel for the respondent/accused would submit that mere execution of cheque is not sufficient. It is for the complainant to prove that the cheque issued by the respondent/accused for the legally enforceable debt or liability. In this case the respondent has denied the means of the appellant/complainant and also shows source to lend money to the respondent. Being a house wife, the appellant is not the woman of means to lend such a huge sum of Rs.15 lakh. Therefore, once the means of the appellant is denied by the respondent and the considerations also denied, the cheque is not issued by the respondent for legally enforceable debt. Since the son of the appellant was working as Office Assistant with the respondent, at that time the cheque was signed. Subsequently, the said cheque was filled to suit the convenience of the appellant and filed a case as against the respondent, mere non sending reply to the legal notice of appellant is not fatal to the case of the defence. Even the defence witnesses need not come into the box and also it is settled proposition that the accused need not produce a direct evidence to disprove the case of the complainant. Further, it is settled proposition of law that it is for the complainant to prove his case beyond reasonable doubt against the accused. In this case, the appellant/complainant has not proved her case beyond reasonable doubt. Though the Magistrate had not properly appreciated the oral and documentary evidence let in by both the parties and wrongly came to the conclusion that the appellant has proved her case beyond reasonable doubt. Whereas, the learned Sessions Judge while dealing with the criminal appeal, as a fact finding Court reappraised the entire oral and documentary evidence and rightly came to the conclusion that the appellant/complainant has not proved her case beyond reasonable doubt and extended the benefit of doubt in favour of the respondent. The appellant has not made out any valid ground in this appeal. The appeal is liable to be dismissed and in support of his contention, he has



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also placed reliance on the following judgments :-

- i) 2014 (2) ALD (Crl.) 61 (SC) (John K, Abraham Vs. Simon C.Abraham and another) and
- ii) Unreported Judgment of Hon'ble Supreme Court in the case of (K.Subramani Vs. K.Damodara Naidu) in Crl.A.No.2402 of 2014

7.The case of the appellant is that the respondent borrowed a sum of Rs.15 lakhs on various dates in the year 2008 and agreed to repay the said amount within a period of 3 months. Since he has not paid any amount, the appellant approached the respondent and demanded the said amount on 12.09.2008 for which, the respondent issued a post dated cheque 12.12.2008, drawn on Indian Overseas Bank, Trichengode Branch bearing cheque No.604202 for a sum of Rs.15 lakhs in favour of the appellant. When the appellant presented the said cheque for collection on 24.12.2008 in her branch Lakshmi Vilas Bank. The said cheque was returned with an endorsement insufficient funds on 27.12.2008. Thereafter, as per the provision of Section 138 of Negotiable Instruments Act, the appellant sent a statutory notice to the respondent through his counsel to the respondent on 09.01.2009. The said notice was received by the respondent on 15.01.2009. After receiving the notice, the respondent has neither chosen to send reply nor repaid the amount. Therefore, she filed a complaint under Section 200 of Cr.P.C., for the offences punishable under Section 138 of Negotiable Instruments Act. In order to prove the case of the appellant on the side of the appellant, she examined herself as P.W.1 and marked 6 documents on the side of defence, the respondent was examined as R.W.1 and no document was marked.

8.The main contention of the appellant is that the respondent borrowed a sum of Rs.15 lakhs and for which a cheque was issued and the respondent admitted the signature found in the said cheque. Therefore, once the signature found in the cheque is admitted, there is legal presumption that the cheque was issued for legally enforceable debt or liability. Further, when the cheque was presented in bank, the same was returned for want of insufficient funds. Immediately, thereafter, he sent a statutory notice for which there was no reply. Therefore, it is a statutory presumption that the cheque was issued for legally enforceable debt. The non sending of reply itself would go to show that the respondent had no defence at all, which was not considered by the learned II Additional District Judge, Salem and therefore, it warrants interference of this Court. The Hon'ble Supreme Court, in the cases referred to supra, has observed that non-sending of reply by the accused is fatal to the case of the defence. Further, the execution of cheque there is a legal presumption that it was issued for legally enforceable liability. It is the contention of the learned counsel for the respondent that the respondent stoutly denied



the borrowal of amount from the appellant and disputed the means of the appellant to lend such a huge amount. So far as the source to lend the money is concerned, the appellant has given contradictory statement that her son owned the land and the money was given to her and she lent the money to the respondent. In another version given by the appellant in her evidence that she was having the huge amount out of the sale proceeds of land belong to her sons. Further, in chief examination she has stated that her son sold the land and gave Rs.15 lakhs to be kept with her. Whereas, in the cross-examination, she has stated that she sold the jewels belong to her and she paid the said amount to the respondent. Therefore, contradictory statement itself shows that transaction as projected by the appellant is not genuine. The probable defence taken by the respondent is acceptable once the signed blank cheque was stolen from the respondent.

9.A careful perusal of the entire materials placed before this Court and also judgment of both the Courts below would show that the appellant has stated that she lent a sum of Rs.15 lakhs to the respondent and for repayment of the said amount, the respondent executed a cheque in favour of the appellant, subsequently, when the cheque was presented before her bank, the said cheque was returned for want of insufficient fund. Subsequently, the statutory notice was issued. After receiving the said notice, neither he repaid the money nor sent any reply. Therefore, the respondent committed offence, though the respondent has not produced any document, whereas the settled proposition of law is that the accused need not produce direct evidence. Probable defence is sufficient and the accused even can rebut the presumption through preponderance of probability. So in this case, the accused denied the source of the appellant. The appellant in chief examination stated that her son sold the land and gave Rs.15 lakhs to her to be kept with her. But whereas, she herself stated during the cross examination that she lent the money from and out of the sale proceed of her own jewels. This itself creates doubt against the statutory presumption that the execution of cheque presumed is issued for legally enforceable debt. But the said legal presumption is rebuttable one. Even under Sections 118 and 149 of Negotiable Instruments Act, the accused can always rebut the said statutory presumption and rebuttable presumption either can be direct or probable defence. In this case the source itself denied and the appellant has stated two versions. Further, even in her complaint, she has stated that the respondent borrowed a sum of Rs.2,96,000/- for management of Amala Matriculation School on 23.03.2008, a sum of Rs.2 lakhs on 23.04.2008, a sum of Rs.3.50 lakhs on 30.05.2008, a sum of Rs.2.50 lakhs on 02.06.2008, a sum of Rs.1 lakh on 07.06.2008 and a sum of Rs.3 lakhs on 09.06.2008 to a total sum of Rs.15 lakhs with interest at the rate of 1% for Rs.100 and agreed to repay the same within



3 months. The respondent denied the borrowal of money and also disputed the means to lend a huge sum of Rs.15 lakhs by the appellant, who is stated to be a house wife. The complainant has not stated as to why within a short period of time she had given huge amount to the respondent. Even without getting any document, she lent money six times within a short period of 3 months to the respondent and when she demanded the money in the month of September also not obtained any document only thereafter the respondent issued the signed blank cheque, which is highly doubtfull. Therefore, the respondent has rebutted the presumption that the complainant has not proved his case as projected by the complainant in the complaint. Once a doubt is created in the mind of the Court and when two views possible, the view which benefit to the accused to be drawn in favour of the accused and extended to the accused. Further, the contention of the appellants, after receiving the notice he has not sent reply. Therefore, the defence taken by the respondent is an after thought. It is the settled proposition of law that the accused need not enter into the witness box or need not give the direct evidence to rebut the presumption and probable defence is enough to rebut the presumption. Though the respondent admitted the signature as already stated, the complainant has given two different versions for source to lend the money and also she has not explained as to why she has given such a huge amount in six different dates. Even without getting any documents, admittedly the subject cheque was also obtained only after three months, no prudent lady would lend such huge amount without getting any documentary proof. Therefore, it also creates doubt in the mind of the Court. Further she has not examined his son to prove the source. Therefore, non sending of the reply is not fatal to the case of the defence. From the available materials, a doubt arises for lending money by the appellant to the respondent as stated in the complaint and in the evidence. Therefore, the benefit of doubt was extended to the respondent by the learned II Additional Sessions Judge. Therefore, this Court does not find any merit in the appeal, the authorities cited by the learned counsel for the appellant are not made applicable to the present case on hand. Therefore, this Court finds no merit in the appeal filed by the complainant.

10.In the result, the appeal is dismissed and the judgment of acquittal recorded by the learned II Additional Sessions Judge is hereby confirmed.

-s/d-

Assistant Registrar (CS-IX)

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Sub-Assistant Registrar



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To

1. The Judicial Magistrate No.I, Sankari.
2. The II Additional Sessions Judge, Salem
3. The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.N. Manokaran Advocate sr 70850

Crl.A.No.37 of 2014

KJI (CO)
SP(01/11/2018)