



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 01.10.2018

DELIVERED ON : 12.10.2018

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.(MD)Nos.288 & 436 of 2018

R.Sivasankaran

.. Appellant/ Appellant/
Complainant in both cases

Versus

T.Shanmuga Sundaram

.. Respondent/Respondent/
Accused in both cases

Prayer in Crl.A.(MD).No.288 of 2018: Criminal Appeal filed under Section 372 of Criminal Procedure Code against the Judgment in C.A.No.86 of 2016 on the file of the Additional District and Sessions Judge, Virudhunagar dated 16.02.2018 in C.C.No.206 of 2012 dated 29.09.2016 on the file of the Learned Judicial Magistrate, Arupukottai, Viruthunagar District.

Prayer in Crl.A.(MD).No.436 of 2018: Criminal Appeal filed under Section 372 of Criminal Procedure Code against the Judgment in C.A.No.87 of 2016 on the file of the Additional District and Sessions Judge, Virudhunagar dated 16.02.2018 in C.C.No.222 of 2012 dated 29.09.2016 on the file of the Learned Judicial Magistrate, Arupukottai, Viruthunagar District.

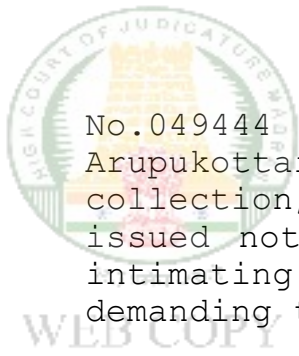
For Appellant : Mr.J.Pandi Dorai
in both cases For Mr.T.Lajapathi Roy

For Respondent: Mr.M.Jothi Basu
in both cases

COMMON JUDGEMENT

The appellant herein is the complainant before the learned Judicial Magistrate, Arupukottai in C.C.Nos.206 & 222 of 2012.

2. The complaints preferred by him under Sections 138 and 142 of the Negotiable Instruments Act alleging that the respondent herein borrowed Rs.4,00,000/- (Rupees Four Lakhs only) and <https://heservices.ecourts.gov.in/hcservices/> RS.2,00,000/- (Rupees Two Lakhs only) from him as hand loan and issued cheques bearing Nos.049441 dated 16.07.2012 and



No.049444 dated 21.07.2012 drawn at Tamil Nadu Merchandile Bank, Arupukottai Branch. When the said cheques were presented for collection, the same were returned for want of funds. Hence, he issued notices through his lawyer on 18.07.2012 and on 03.08.2012 intimating about the return of cheques, for want of funds and demanding the cheque amount. The said notices returned un-served.

3. To prove his case, the complainant has examined himself as P.W.1. The returned cheques, bank intimations, advocate notices, postal receipts, returned un-served covers were marked as Ex.P1 to Ex.P6. The accused examined himself as D.W.1. The Bank Manager was examined as D.W.2. One Ramasubbu, friend of D.W.1/accused examined as D.W.3. The trial Court on appreciation of the evidence has held the respondent guilty of offence under Section 138 of the Negotiable Instruments Act and convicted the respondent for offence under Section 138 and sentenced him to undergo six months Simple Imprisonment and to pay Rs.4,00,000/- as compensation in C.C.No.206 of 2012; and sentenced him to undergo six months Simple Imprisonment and to pay compensation of Rs.2,00,000/- in C.C.No.222 of 2012.

4. The respondent/accused herein has preferred Appeal before the District and Sessions Judge, Viruthunagar in C.A.Nos.86 and 87 of 2016. The Appellate Court reversed the findings of the trial Court and acquitted the accused. Aggrieved by the said reversal of judgment, the present Appeal has been filed alleging the lower Appellate Court erroneously reversed the trial Court judgment.

5. Per Contra, the learned counsel for the respondent/accused would contend that the trial Court failed to observe the fact that the two cheques which are the subject matter of the case, wherein one cheque bearing No.049441 is dated 16.07.2012 in C.C.No.206 of 2012 whereas the subject cheque bearing No.049444 in C.C.No.222 of 2012 is dated 21.07.2012. Though the cheque numbers and date of the cheque or not in seriatim and the specific case of the defense that three cheques were given as security for the mortgage loan of Rs.2,00,000/- on the day of mortgage which was not considered by the trial Court, but, the Appellate Court has rightly considered these aspects and reversed the findings of the trial Court. Hence, the Appellate Court judgment needs no interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel for the respondent and perused the materials placed before this Court.

7. The complainant and the accused are known to each other for long time. The complainant is involved in real estate business. The accused, who wanted to establish the power loom, has borrowed money from the complainant. While the case of the complainant is that the subject cheques were issued towards the



hand loan of Rs.4,00,000/- (Rupees Four Lakhs only) and Rs.2,00,000/- (Rupees Two Lakhs only).

8. The defense taken by the accused is that earlier, he mortgaged his ancestral property for Rs.2,00,000/- and as a security, he issued three cheques to the complainant, on the same day which has been misused by the complainant. In support of his defense, he has examined himself and also two other witnesses. The mortgage deed dated 04.11.2011 also been marked as defense Ex.D.1

9. The trial Court considered the consistency in case of the complainant and contradictions between the evidence of D.W.1 and D.W.3, which falsifies the explanation offered by the accused to rebutt the presumption and has convicted the accused. Whereas, on appeal, the First Appellate Court pointing out that when a mortgage loan of Rs.2,00,000/- not discharged, no person will lend a further loan of Rs.4,00,000/- and Rs.2,00,000/- Further, the signatures and writings in the subject cheques were in two different ink and two different hand writings. If the cheques were issued on the day with name, date, amount and signature all, would/could/should have been returned/filled up in one ink and not in two different inks and in two different hand writings.

10. The learned Appellate Judge has also recorded that on his bare perusal of P.W.1, cheques with naked eye, he could find that the signatures were in blue colour ink, by one kind of hand writing and the name, date and amount both in words and figures were in different ink by different hand writings. Further, the Appellate Court has also observed that the complainant has failed to prove that the subject cheques were issued for discharge of unforceable debt and therefore, presumption under Sections 118 and 139 of Negotiable Instrument Act cannot be drawn against the appellant.

11. For the above said reasons, the Appellate Court has reversed the findings of the trial Court. Aggrieved by the said reversal findings, the present appeal is filed on the ground that Appellate Court has failed to consider the falsity of defense witness. The factum of issuing the cheques on 30.06.2012 not being disputed by the accused and the attempt to show that the subject cheque was obtained on the date of executing the mortgage deed being falsified despite examining of D.W.1 and D.W.3. The First Appellate Court has still dismissed the complaint by reversing the well considered judgment of the trial Court.

12. It is pointed out by the learned counsel for the appellant that the first Appellate Court by surmises and conjectures has laid its conclusion that the variance in colour and writings found in the subject cheques, amounts to material alteration in the Negotiable Instrument. The said findings of the First Appellate Court is perverse, contrary to law.

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13. The above contentions of the learned counsel for the

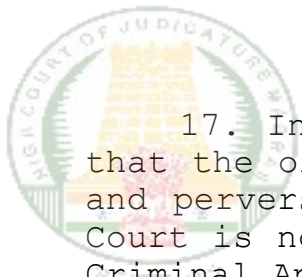


appellant deserves consideration. It is not disputed by the accused that the said cheques was issued by him to the complainant. The difference in ink colour and writings does not amount to material alteration as observed by the First Appellate Court. The Appellate Court ought to have not understood the spirit of Section 20 of the Negotiable Instruments Act. While considering the presumptive provisions under Sections 118 & 139 of the said Act, a cheque issued on a particular day need not be on the same ink and same hand writing. It is the signature of the account holder found in the cheque need to be tested. For deciding whether there is any material alteration in the writing which will lead to manipulation. The writing found in the cheques in two different ink or two different hand writing is not at all an alteration, more so, a material alteration. The said alternation must be with respect of the 'Date', 'amount' in words' or figure or the name of the payee.

14. The other fallacies in the findings of the Lower Appellate Court is that D.W.1/accused admits that he and the complainant had financial transactions with each other, he has already borrowed Rs.2,00,000/- by mortgaging his ancestral property and he has issued the subject cheques to the complainant. He cannot travel beyond that to infer that no person will lend further when the earlier mortgage deed stand un-redeemed. Human behavior varies from person to person and based on various factors. In the cross examination, the complainant has clearly stated that, "Yes, I advanced further loan to the accused, since the property which he has mortgaged with me is worth more than Rs.15,00,000/-". In the perception of the complainant, the property mortgaged as against the loan of Rs.2,00,000/- being worth more than Rs.15,00,000/-, he has ventured to advance a further loan of Rs.4,00,000/- and Rs.2,00,000/-.

15. To discharge the burden, the accused has examined himself and also one of his friend/D.W.3, while D.W.1 would say that the cheques were issued on the date of executing the mortgage deed Ex.D1 (i.e.,) on 04.11.2011 whereas D.W.2, the Bank Manager has deposed that the complainant gave a request for issuance of cheques on 04.01.2012 and pursuant to that, he issued cheques on 05.01.2012. The evidence of D.W.2, and the explanation of the accused goes to show that the subject cheques were given to the complainant on 04.11.2011 itself when he mortgaged the property and obtained loan of Rs.2,00,000/- gets falsified.

16. Similarly, the evidence of D.W.3/ Ramasubbhu also does not enhance the case of the defence. He was not a witness to the mortgage deed. He is not aware of on which date the subject cheques were issued to the complainant by the accused. In the above said circumstances, the finding of the first Appellate Court reversing the well considered judgment of the trial Court ought to be set aside.



17. In the result, for the above said reasons this Court holds that the order of the First Appellate Court bristles with infirmity and perversity. The reasoning to reverse the findings of the trial Court is not in accordance with law or the facts on records. Hence, Criminal Appeals are Allowed.

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18. In the result, these Criminal Appeals are allowed. The Judgments dated 16.02.2018 passed in C.A.Nos.86 and 87 of 2016 by the learned Additional District and Sessions Judge, Virudhunagar are set aside and the Judgments dated 29.09.2016 passed in C.C.Nos.206 & 222 of 2012 by the learned Judicial Magistrate, Arupukkottai are restored. The trial Court is directed to secure the respondent/accused and commit him to prison to undergo the period of sentence.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To

- 1) The Additional District Sessions Judge,
Virudhunagar.
- 2) The Court of Judicial Magistrate,
Arupukkottai, Virudhunagar District.

Copy to:

The Section Officer,
Criminal Section/Records,
Madurai Bench of Madras High Court,
Madurai. 2COPIES

- 2 CCs TO Mr.T.LAJAPATHY ROY , ADVOCATE IN SR No.90882,90881.
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- STS
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Common Judgment in
Cr1.A.(MD)Nos.288
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