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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
11.01.2018	30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)Nos.78, 79 and 80 of 2016
and
Crl.M.P.(MD).Nos.1424 to 1429 of 2016

G.Arulmanikandan : Petitioner in all cases

Vs.

K.Sahaya John Hendri Rex : Respondent in all cases

COMMON PRAYER: Criminal Revision Cases are filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records in Criminal Appeals in C.A.Nos.153, 154 and 155 of 2014 dated 31.08.2015, on the file of the Second Additional District Court, Tiruchirappalli, preferred against the Judgment and sentence dated 25.09.2014 07.10.2014, in S.T.C.Nos.1737, 1739 and 1738 of 2010, on the file of the Judicial Magistrate Court No.5, Tiruchirappalli and to set aside the Judgment and sentence of the Lower Courts.

For Petitioner : Mr.V.Kannan
For Respondent : Mr.C.Vakeeswaran

COMMON ORDER

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. It is the case of the complainant that he had invested a sum of Rs.7,00,000/- with a concern, known as "Netcom Information & Technology", run by the accused. The accused promised the complainant that the investment would fetch an interest of 10%; that the accused gave three cheques, namely, a sum of Rs.4,00,000/-, dated 15.03.2010, drawn on Kotak Mahindra Bank Limited, Sathiri Road, Thillai Nagar, Trichy, a sum of Rs.1,00,000/-, dated 30.05.2010, drawn on State Bank of India, Palakarai Branch and a sum of Rs.2,00,000/-, dated 16.06.2010, drawn on ING Vysya Bank Limited, Chinnakadi Street, Trichy, in favour of the complainant and the complainant presented all the three cheques, on 31.08.2010 and the cheques were returned on 02.09.2010 unpaid. The complainant issued a notice dated 16.09.2010, which was received by the accused on 20.09.2010 and the accused gave a reply dated 30.09.2010 to the

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notice dated 16.09.2010 issued by the complainant. Thereafter, the complainant filed three prosecutions, namely, S.T.C.Nos. 1737, 1739 and 1738 of 2010 for each of the cheques under Section 138 of the Negotiable Instruments Act, 1881, before the learned Judicial Magistrate, No.V, Trichirappalli, against the accused.

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3. On receipt of the summons, the accused appeared and denied the accusation under Section 251 of the Code of Criminal Procedure. On behalf of the complainant, the complainant examined himself as PW-1 in each of the case and marked five exhibits, namely, impugned cheques, return memo, advocate notice, postal acknowledgment card and reply notice. When the accused was questioned under Section 313 of the Code of Criminal Procedure, he denied the same. The accused examined himself as DW-1. The Trial Court considered the evidence adduced by both sides and by individual Judgments dated 25.09.2014 and 07.10.2014 convicted the accused for the offence under Section 138 of the Negotiable Instruments Act 1881 and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month and the cheque amount was directed to be paid as compensation within a period of three months. It may be pertinent to state that the sentences were awarded in each case separately on the same day, namely, on 25.09.2014 and 07.10.2014. Challenging the said conviction and sentence, the accused filed three Criminal Appeal Nos.153, 154 and 155 of 2014, which were dismissed by the Second Additional District Court, Tiruchirappalli, by individual Judgments dated 31.08.2015, confirming the conviction and sentence imposed on the accused. Challenging the convictions and sentences, the accused filed Crl.RC.(MD).Nos.78 to 80 of 2016.

4. Heard the learned counsel appearing for the accused and the learned counsel appearing for the complainant.

5. The learned counsel for the petitioner submitted that the accused was, admittedly, running Netcom Information & Technology, which is an IT Company and that he had never demanded any deposits, because, he was not running any financial establishment. On the contrary, it is the case of the accused that he had introduced the complainant and three others, namely, V.Ravichandran, T.Kumaresan and P.Ilango to invest in a financial establishment, by name, M/s.K.S.Merchantile & M/s.Net Work and that the complainant invested the money in the said company. The accused had also invested the money in the said company. The said company had failed to return the deposits, on account of which a separate case has been registered in Crime No.6 of 2009 by the police under the provisions of the Tamil Nadu Protection of Interest of Depositors [In Financial Establishment] Act, 1997. It is the case of the accused that since the complainant was not able to be recover his investments from the said financial establishment, the complainant and the others, namely, P.Ilango, T.Kumaresan and V.Ravichandran, had set up the people to attack the house of the accused and under the above stated circumstances, he was forced to hand over the impugned cheques.

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6. Per contra, the learned counsel for the complainant submitted that the accused had only collected the deposits for investment in his company on the promise of giving 10% interest and that in discharge of his liability, he had issued the said cheques. The learned counsel for the complainant further submitted that the accused admitted his signature in the cheques and therefore, the presumption under Section 139 of the Negotiable Instruments Act, 1881, would apply and the burden is on the accused to prove that there was no valid debt.

7. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

8. Under normal circumstances, this Court would not re-appreciate the evidence, while dealing with a Criminal Revision Case, under Section 397 r/w Section 401 of the Code of Criminal Procedure, when two Courts below have already appreciated the evidence and given concurrent findings. However, this Court found that V.Ravichandran, P.Ilango, T.Kumaresan and K.Sagayanathan Henry Rex have totally filed 12 prosecutions against the accused on the same ground. For example, in the three prosecutions filed by K.Sagayanathan Henry Rex, he has stated that he had given deposit of Rs.7,00,000/- and towards the discharge of Rs.7,00,000/-, the accused had given three cheques for a sum of Rs.4,00,000/-, Rs.1,00,000/- and Rs.2,00,000/-. It may be pertinent to state that after the receipt of the statutory notice, the accused has admittedly sent a reply notice dated 30.09.2010, wherein he has stated that he had introduced the complainant to one K.Sasireka of Coimbatore, who was running M/s.K.S.Merchantile & M/s.Net Work, which is a finance company and the complainant had invested his money in the said financial establishment and K.Sasireka had failed to return the amount and therefore, cases in Crime Nos.12 and 63 of 2010 were registered by the City Crime Branch, Coimbatore against K.Sasireka and she was arrested, on 19.04.2010, by the police and on her arrest, the complainant and the three others, stoned the house of the accused. It may be pertinent to extract the relevant paragraphs from the reply notice, dated 30.09.2010, which has been marked as an exhibit in the Trial Court, which are as under:-

> "7. In fact, Mrs.K.Sasireka was arrested on 19.04.2010 in the Crime No.12 and Crime No.63 of 2010 by the [CCB] City Crime Branch, Coimabtore, and the case is transferred to [E.O.W] Economic Offence Wing Coimbatore and the investigation in programe. For your kind information, the accused Mrs.K.Sasirka was duped more than one hundred crores from the public.
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> 8. When Mrs.K.Sasireka was arrested at that time, on the heading of Mr.V.Ravichandran, Mr.T.Kumaresan, Mrs.Sagaya John Henry Rex and seven more persons came and damaged my house

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grill gates, stoned into my house, damaged the calling bells, stoned and broke and glass of my house and threatened my parents illegally with the help of the seven persons and harassed my family members and performed illegal Kattapanchayat and collected twenty five lakhs from me threatening with their illegal team and apart from me, that Mr.T.Kumaresan received for an emergency from me, through my Indus Bank Account some money. With this through my Indus Bank Account some money, with this money only M.V.Ravichandran has purchased a new house. Sangiliyandapuram, with huge value. Even he has suppressed huge taxes and avoided taxes in income tax, which he is not shown all the unaccounted money".

9. It may be relevant to state that this reply notice has not been sent through any advocate, but the accused himself has sent the reply notice, immediately after the receipt of the statutory notice issued by the complainant. The accused appeared before the learned Judicial Magistrate No.V, Trichirappalli and took part in the trial, without the assistance of any advocate. He did not even cross-examine the complainant. Thereafter, he himself waived his right of silence under Section 315 of the Code of Criminal Procedure and has got into the witness box and has deposed. Thus, it is seen that the complainant had not deposited any amount and that he had deposited money only with K.Sasireka and when K.Sasireka was not able to return the amount, a police case was registered against K.Sasireka and thereafter, she was arrested. Thereafter, the complainant and his friends had stoned the house of the accused and hence, he was forced to give the cheques. In the cross-examination, the accused had admitted that he had signed the cheques. There appears to be a ring of truth in the version of the accused for the following reasons:-

10. Neither in the complaint nor in the evidence, the complainant has stated the date, on which date he deposited the sum of Rs.7,00,000/- with the accused. Not even the year, in which the amount was deposited has been stated. It may be relevant to extract Paragraph Nos.2 and 3 from the complaint, which are as under:-

"2. The accused had approached petitioner for deposit of money in his company and further he had assured with petitioner that every deposit would get 10% as interest and incentive.

3. The petitioner believing your words, borrowed money from his friends and relatives and the petitioner deposited Rs.7,00,000/- [Rupees Seven Lakhs only] in the accused's concern NETCOM INFORMATION & TECHNOLOGY".

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11. Assuming for a moment that the complainant had deposited a sum of Rs.7,00,000/-, he would have obtained a deposit receipt from the accused. In this case, the complainant has not even produced a shred of evidence to show that he had deposited the amount with the accused. It is not the case of the complainant that he had given a hand loan to the accused. It is the specific case of the complainant that he had deposited the amount in the IT Company of the accused on the promise of getting interest for his deposits. Though the presumption under Section 139 of the Negotiable Instruments Act, 1881, could be invoked, yet, in **Rangappa vs. Sri Mohan, [(2010) 11 SCC 441]**, the Supreme Court has clearly stated that the accused can discharge the burden under Section 139 of the Negotiable Instruments Act, 1881, by preponderance of probabilities and not by proof beyond reasonable doubt.

12. At the risk of repetition, in this case, the accused has himself sent a reply notice to the statutory notice issued by the complainant and thereafter, has got into the witness box to depose about the circumstances, in which the cheques were issued.

13. In such view of the matter, this Court is of the view that the complainant has failed to prove the debt by cogent evidence and therefore, there are no *prima facie* materials that the cheques were issued in discharge of the debt as required under Section 138 of the Negotiable Instruments Act, 1881. Both the Courts below have not considered the above aspect of the matter.

14. In the result, the Criminal Revision Cases are allowed; the Judgments dated 31.08.2015 made in C.A.Nos.153, 154 and 155 of 2014, on the file of the Second Additional District Court, Tiruchirappalli, confirming the conviction and sentence dated 25.09.2014 and 07.10.2014, made in S.T.C.Nos.1737, 1739 and 1738 of 2010, on the file of the Judicial Magistrate Court No.5, Tiruchirappalli are set aside and the accused is acquitted. Fine amount, if any paid by the accused, shall be refunded to him. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Second Additional District Judge,
   Tiruchirappalli.

2. The Judicial Magistrate Court No.5,
   Tiruchirappalli.

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The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 3 CC TO Mr.C.VAKEESWARAN, ADVOCATE IN SR Nos. 45493 to 45495

NB
TE/MR/SAR-4 : 15/02/2018 : 6P/8C

COMMON ORDER MADE IN
Crl.R.C.(MD)Nos.78, 79 and 80 of 2016 and
Crl.M.P.(MD).Nos.1424 to 1429 of 2016
Dated:-30.01.2018
(4/4)

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