IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1132 of 2016
and Crl.M.P.No.509 of 2016

Mathialagan ... Petitioners

Vs.

1. Dr.R.Ramkumar

2. R.Shivashankari ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed in C.M.P.No.1789 of 2015 in C.C.No.150 of 2012 dated 05.10.2015 on the file of the Learned Judicial Magistrate, Cheyyar, Thiruvannamalai District.

For Petitioners : Mr.K.G.Senthil Kumar
For Respondents : No Appearance

O R D E R

This Criminal Original Petition has been filed to set aside the order passed in C.M.P.No.1789 of 2015 in C.C.No.150 of 2012 dated 05.10.2015 on the file of the Learned Judicial Magistrate, Cheyyar, Thiruvannamalai District.

2. It is seen that, in the impugned order, the petitioner has been directed to produce the following documents:

(1) Account book mainted by the respondent / complainant for the year 2011-2012, 2012-2013.
(2) Income Tax returns for the assessment year 2012-13, 2013-14
(3) The Bank statement for the period from 01.12.2011 to 31.02.2012

3. The learned counsel for the petitioner submitted that the aforesaid documents are not essential to conduct the trial under Section 138 of Negotiable Instrument Act. In this regard the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.508 of

2019 dated 15.03.2019, and the relevant paragraph i.e. Para Nos.7.1 & 21 are extracted hereunder : -

> 7.1 The High Court observed that if the transaction in question was not reflected in the accounts and income-tax returns, that would at best hold the assesse or lender liable for action under the income-tax laws but, if the complainant succeeds in showing the lending of amount, the existence of legally enforceable debt cannot be denied. The High Court also observed that the issue regarding washing away of the cheques in rain water was of no significance when the accused had accepted his liability in clear terms. The High Court found that the defence plea of the accused that the money was given as hand loan by his friend Shri Jagdishbhai got falsified by the version of the said Shri Jagdishbhai, who was examined as a witness on behalf of the complainant. The High Court, therefore, set aside the impugned orders and, while convicting the accused-appellant for the offence under Section 138 of the NI Act, sentenced him in the manner noticed hereinbefore. The High Court, inter alia, observed and held as under:
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>> "24. It is necessary at this stage also to refer to the emphasis laid by the learned counsel appearing for the respondent No.2 on the source of the fund which has been lent by the appellant. It has emerged from the detailed examination of the record, as also detailed examination-in-chief as well as cross-examination, that the complainant runs the business. He also maintains the books of account and he has his own factory in the name and style of 'Ashirwad Enterprise' and manufactures plastic. The said factory is situated at Jambusar. Ordinarily, any prudent business person would prefer to transact by cheque while lending money, but it is quite often noticed that the cash transactions in the business would allow huge sum of money as cash, which sometimes are shown in the books of account as cash on hands or otherwise as amount available on books. Assuming that cheque transaction of lending of amount is absent and income-tax returns also do not reflect such amount, that at the best would hold the assessee or lender liable for action under the Income-tax laws. However, otherwise,

if he succeeds in showing lending of such amount, both by oral evidence of himself and his friend, on whom even respondent No.2 relies upon and from the writing of the respondent No.2 given separately along with seven cheques signed by him, what possible reasons could weigh with the Court to deny the existence of legally enforceable debt in such glaring circumstances.

25. Considering the fact that the complainant maintains his books of account, coupled with the fact that the respondent No.2 had merely refuted on flimsy ground of his having transacted with witness Jagdishbhai and not with the complainant, has failed to discharge the burden which had shifted upon him. It is to be noted that the respondent No.2 has admitted his signature on the impugned cheque. At no point of time, the cheque has been disputed……Once this fact is acknowledged that the signature on the cheque is that of the respondent No. 2-accused, section 139 of the Negotiable Instruments Act would mandate the presumption that the cheque concerns a legally enforceable debt or liability. Of course, this presumption is in the nature of rebuttal and onus is on the accused thereafter to raise a probable defence.

25.1 As can be noted from the chronology of events and the material that has been placed before this Court that the defence raised by the accused is not at all probable. The respondent No.2-accused states that the money was given as a hand loan by his friend Jagdishbhai and not the appellant, also gets falsified completely by the version of Jagdishbhai. It appears that in case of all the seven cheques when notices were given prior to the filing of the complaint, he has chosen not to reply to four of the notices. Either on account of insufficiency of the funds or because he has closed account that the cheques could not be realized. All these circumstances cumulatively lead this Court to conclude that the appellant succeeded in proving the legally enforceable debt and no probable defence for rebutting the statutory presumption is raised by the respondent No.2.

25.2 Initial presumption as contemplated under section 139 of the Negotiable Instruments Act, when the proof of lending of the money and acceptance of the signatures on the cheques, shall need to be raised by the Court in favour of the appellant.

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28. ………. Reasonably, when the appellant had proved the legally enforceable debt, not only through his own evidence, but also through the evidence of his friend Jagdishbhai and also other contemporaneous record, more particularly, the document at Exhibit 24, which is a writing by which the respondent No.2 clearly indicates and accepts his liability to the tune of Rs. 22.50 lakh. Thus, the burden had shifted upon the respondent No. 2. The presumption which was needed to be drawn by the Court under section 118 of the Negotiable Instruments Act would oblige the Court to presume that the cheque had been issued for consideration and until contrary is proved, such presumption would hold the ground. Except the bare denial, nothing has been found to come on record to dislodge the positive proof that has been adduced by the appellant.

29. In the opinion of this Court, the entire argument that the rainy water could not have washed away the cheques, pales into insignificance and is not argument worth consideration, more particularly, when the respondent-accused in no unclear terms had accepted his liability of his having accepted the amount of Rs. 22.50 lakh from the complainant and it also declared the issuance of seven cheques of particular dates towards such legally enforceable debt. If it was an understanding between the parties qua issuance of fresh cheques, with an ostensible reason of old cheques having washed away, those are the non-issues. This Court cannot be oblivious of the fact that section 138 of the Negotiable Instruments Act has been made a penal provision not only for the cheques to give acceptability in the transaction, but it is the economic blood-line of the country and,

therefore, the law makers have made the special rules of evidence by introducing sections 118 and 139 of the Negotiable Instruments Act.

30. The trial Court has committed a serious error by not discharging its obligation of recognizing the evidentiary value and not appreciating the positive evidence which led to the reasonable proof of legally enforceable debt existing on the side of the original complainant."

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21. The result of discussion in the foregoing paragraphs is that the major considerations on which the Trial Court chose to proceed clearly show its fundamental error of approach where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond reasonable doubt. Such being the fundamental flaw on the part of the Trial Court, the High Court cannot be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. As noticed hereinabove, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the Trial Court and after examining the evidence on record as a whole, found that the findings of the Trial Court are vitiated by perversity. Hence, interference by the High Court was inevitable; rather had to be made for just and proper decision of the matter.

4. Therefore, the Hon'ble Supreme Court of India has held that the Income Tax Returns could not serve any purpose after conducting the trial under Section 138 of Negotiable Instrument Act.

5. Based on the above observations, the impugned order in C.M.P.No.1789 of 2015 in C.C.No.150 of 2012 dated 05.10.2015 on the file of the Learned Judicial Magistrate, Cheyyar, Thiruvannamalai District cannot be sustained and is accordingly, set aside. In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

6. However, considering that the calender case is of the year 2012, the trial Court is directed to complete the trial in C.M.P.No.1789 of 2015 in C.C.No.150 of 2012 within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Judicial Magistrate,
   Cheyyar,
   Thiruvannamalai District

2. The Public Prosecutor,
   High Court, Madras.

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and Crl.M.P.No.509 of 2016

CSL/13.05.2019