

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2019

PRONOUNCED ON : 02.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.768 to 770 of 2013

G.Raja ... Appellant in Crl.A.No.768/2013
G.Ramadoss ... Appellant in Crl.A.No.769/2013
G.Ramesh ... Appellant in Crl.A.No.770/2013

Vs

M.Lakshmanan ... Respondent in all Crl.As

Prayer in Crl.A.No.768 of 2013:- These Criminal Appeals are filed under Section 374(2) Cr.P.C., against the acquittal order passed by the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpattu in Criminal Appeal No.23 of 2010 dated 05.12.2012.

Prayer in Crl.A.No.769 of 2013:- These Criminal Appeals are filed under Section 374(2) Cr.P.C., against the acquittal order passed by the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpattu in Criminal Appeal No.24 of 2010 dated 05.12.2012.

Prayer in Crl.A.No.770 of 2013:- These Criminal Appeals are filed under Section 374(2) Cr.P.C., against the acquittal order passed by the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpattu in Criminal Appeal No.25 of 2010 dated 05.12.2012.

For Appellant : Mr.Tranqubar Dorai Vasu, for
in all Crl.As Mr.L.Prabakaran

For Respondent : Mr.V.Prakash, Senior Counsel
in all Crl.As for Mr.K.Krishnamoorthy

COMMON JUDGMENT

These three criminal appeals arise from three private complaints against the respondent - Lakshmanan filed under section 138 of the Negotiable Instruments Act. The complainants

are brothers. One complaint is filed by G.Ramesh in his personal capacity and other two complaints are filed by him in the capacity as power agent of his brothers Raja and Ramdoss. The facts and point of law involved, in these cases, are one and same. Hence, the three Criminal Appeals are taken up together for consideration and common judgment is passed.

2.Three complaints in (i) C.C.No.10 of 2008 preferred by G.Raja represented by his power agent G.Ramesh; (ii) C.C.No.11 of 2008 preferred by G.Ramdoss represented by his power agent G.Ramesh and (iii)C.C.No.12 of 2008 preferred by G.Ramesh, all against M.Lakshmanan, were taken on file and tried by the learned Judicial Magistrate, Alandur, Chennai.

3.The contention of the complainants was that, they entered into an oral partnership agreement with the respondent/accused and invested Rs.10 lakhs each. The respondent/accused failed to render accounts. After much persuasion, the respondent/accused agreed to give part profit in the business and gave i) Cheque bearing No. 375924 dated 24.10.2008 drawn in favour of Raja, ii) cheque bearing No. 375928 dated 03.10.2008 drawn in favour of Ramesh and iii) cheque bearing No. 375931 dated 03.10.2008 drawn in favour of Ramdoss, from his account, maintained at Lakshmi Vilas Bank, Kodambakkam branch for Rs.10 lakhs each.

4.When those cheques were presented by the appellants in their respective accounts maintained in City Union Bank at Nanganallur, all the three cheques were returned with an endorsement 'funds insufficient'. Each of them issued separate notice dated 12/11/2008 with same set of facts calling upon the respondent/accused to pay the cheque amounts or to face the consequence.

5.The respondent/accused replied through notice dated 20/11/2008 denying the liability. The contention of the respondent/accused is that, there was oral partnership agreement and the appellants each invested Rs.10 lakhs for the business and the respondent/accused was working as partner in it, were all denied as concocted, unbelievable, baseless and worthless tale. Further, the respondent/accused made a specific averment about the loan transaction he had with Raja through one of his co-employee Ramu. Towards the loan of Rs.10 lakhs received from Raja, he gave several undated cheques, blank promissory notes towards security. He paid the interest periodically and the principal was repaid in two instalments. Rs.3 lakhs by cash on 08/10/2005 and by cheque for the balance Rs.7 lakhs on 07/08/2008. There is no other liability to Raja or others. The

blank cheques issued as security for the loan availed long back has been misused by the appellants/complainants.

6. Before the trial court, the complainants and the accused to prove their respective averments made in the notice and reply notice had examined witnesses and relied documents. On behalf of the complainants, one of the complainant, Ramesh for himself and power agent of the other complainants was examined as PW-1. Through him, the cheques; bank intimation memos; copy of the statutory notice; postal acknowledgment and the reply notice were marked as exhibits. In defence, the accused mounted the witness box, examined as DW-1. Three exhibits viz., Exs.D-1 to D-3, i) The bank statement of account maintained by the accused at KVB, Kodambakkam for period between 03/04/2000 and 24/04/2002 to show the cheques in dispute were related to the transaction of the year 2001-2002 and not of the year 2008; (ii) The slip dated 08/10/2005 to prove the payment of Rs.3 lakhs in cash to Ramdoss based on the authorisation given by Raja and (iii) The bank statement of account for the period between 07/08/2008 to prove the cheque bearing No.502486 issued in favour of Raja for Rs.7 lakhs was honoured by the accused.

7. The trial court convicted the accused holding that, having admitted the signatures in the cheques and issuance of the cheques, the accused has failed to prove the probability of issuing the cheques otherwise than to discharge the debt or liability. The accused has not discharged the reverse burden of presumption under section 139 of the Negotiable Instruments Act.

8. The appeals preferred by the accused were considered by the lower appellate court positively. The improbabilities such as investing a total sum of Rs.30 lakhs by the brothers without a piece of document and failure to show the source, coupled with the defence evidence proving that the cheques under consideration were of the year 2001, to discharge the debt of the year 2008 give rise to strong suspicion. The slip - Ex.D-2 and the entries found in the statement of accounts marked as Ex.D-3 indicate that the loan borrowed from Raja has been discharged by the accused. While the accused has discharged his burden of rebuttal of presumption on preponderance of probabilities that, the cheques were entrusted with Raja one of the complainant as a security for the loan borrowed from him in the year 2001, the complainants have failed to prove the cheques were for discharge of enforceable debt or liability.

9. In the above background of facts, the present Criminal Appeals are filed by the aggrieved complainants/appellants.

10. The learned counsel for the complainants/appellants contented that the dicta laid by the Hon'ble Supreme Court in Rangappa -vs- Mohan reported in 2010 (11) SCC 441, not been followed by the lower appellate court. While the accused admit financial transaction with the complainants between the years 2001 and 2008, lower appellate court ought not to have reversed the finding of the trial court on the ground that Exs.D-1 and D-3, statement of accounts indicate that the alleged cheques were not issued in the year 2008 for the discharge of debt. When the banking law does not mandate cheques should be issued in seriatim, nothing could be inferred adverse to the complainants just because, the cheques of subsequent numbers were presented and realised in the years 2001 -2002 itself. The allegation of the accused that the blank cheques given by him in the year 2001 as security was misused in the year 2008, has no basis. He has neither given complaint nor reported to the bank to 'stop payment' of those cheques. While so, the presumption under section 139 of the Negotiable Instruments Act does not get discharged on mere denial and vague averments.

11. The lower appellate court failed to consider that the accused is the learned person working in the Bank. He admits knowledge about the consequence of issuing cheque without funds. Except Exs.D-1 to D-3, which have no relevancy to the transactions covered under the subject cheques, the accused has not placed any evidence to rebut the presumption. So, the learned counsel for the complainants/appellants contents that, the defence documents only enhance the case of the complainants that the accused admitting his liability and made certain payments. The cheques unrealised are issued for the discharge of remaining liability.

12. The learned Senior Counsel appearing for the respondent/accused relying upon the reply notice would submit that the complainants have not placed any evidence to show they along with the accused were partners in business or the complainants invested money in the business and the accused owe them money. In fact, the accused had financial transaction only with Raja and not with other complainants. That was a simple loan transaction of Rs.10 lakhs. Same was repaid by the accused through cash and cheque. The repayments are proved through Exs.D-2 and D-3.

13. Referring judgments of the Supreme Court and high courts, the learned Senior Counsel submitted that, the reverse onus clause usually impose an evidentiary burden and not a persuasive burden. The standard of proof for doing so is that of preponderance of probabilities. In this case, the accused has established the probable defence which creates doubt about the existence of a legally enforceable debt or liability, therefore, the complainants have to fail.

14. The lower appellate court which is court, 'on facts' has acquitted the accused holding that the accused has rebutted the presumption and the complainants have failed to prove that the alleged cheques were issued for discharge of debt. When two possible views are equally possible, the view of the lower appellate court holding the view favourable to the accused and acquitting him need not be interfered.

15. The learned counsel on either side has placed before this court catena of judgments which has tested the law of presumption mentioned in Sections 118 and 139 of the Negotiable Instruments Act, in the given facts and rendered its finding. The bedrock among them and quoted invariably in all the subsequent judgments is judgement of three judges Bench rendered in Rangappa case (cited supra).

16. The dicta laid in Rangappa case (cited supra) case is as below:

" 26. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonor of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

17. Subsequent to Rangappa case (cited supra), the hon'ble Supreme Court in Vijay vs. Laxman (2013(3) SCC 86) after referring to earlier judgments has held as below:-

"21. In M.S. Narayana Menon v. State of Kerala (2006) 6 SCC 39, while dealing with that aspect in a case under Section 138 of the Negotiable Instruments Act, 1881, this Court held that the presumptions under Sections 118(a) and 139 of the Act are rebuttable and the standard of proof required for such rebuttal is preponderance of probabilities and not proof beyond reasonable doubt. The Court observed:

"29. In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words proved and disproved have been defined in Section 3 of the Evidence Act (the interpretation clause)...

30. Applying the said definitions of proved or disproved to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.
xx xx xx xx

32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.
xx xx xx xx

41...Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in

support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.

22.The decision in M.S. Narayana Menon (supra) was relied upon in K. Prakashan P.K. Surenderan (2008) 1 SCC 258 where this Court reiterated the legal position as under:

"13. The Act raises two presumptions; firstly, in regard to the passing of consideration as contained in Section 118 (a) therein and, secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability. Presumptions both under Sections 118 (a) and 139 are rebuttable in nature.

14. It is furthermore not in doubt or dispute that whereas the standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability.

23.To the same effect is the decision of this Court in Krishna Janardhan Bhat v. Dattatraya G. Hegde (2008) 4 SCC 54 where this Court observed:

"32 Standard of proof on the part of an accused and that of the prosecution a criminal case is different.

xx xx

34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities.

xx xx xx xx

45. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption

of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced.

24. Presumptions under Sections 118(a) and Section 139 were held to be rebuttable on a preponderance of probabilities in *Bharat Barrel & Drum Manufacturing Company v. Amin Chand Pyarelal* (1999) 3 SCC 35 also where the Court observed:

"11.'32..... Though the evidential burden is initially placed on the defendant by virtue of S.118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'.

For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden.

25. In *Hiten P. Dalal v. Bratindranath Banerjee* (2001) 6 SCC 16 this Court compared evidentiary presumptions in favour of the prosecution with the presumption of innocence in the following terms:

"22. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary."

26.The Decisions in Mahtab Singh & Anr. v. State of Uttar Pradesh (2009) 13 SCC 670, Subramaniam v. State of Tamil Nadu (2009) 14 SCC 415 and Vishnu Dutt Sharma v. Daya Sapra (2009) 13 SCC 729, take the same line of reasoning.

27. Coming then to the present case, the absence of any details of the date on which the loan was advanced as also the absence of any documentary or other evidence to show that any such loan transaction had indeed taken place between the parties is a significant circumstance....."

18.To discharge the reverse onus, the accused has raised doubt about the privity between him and the complainants. This doubt is raised in his reply notice dated 20/11/2008. To the averment in their statutory notice that there was oral partition between them; the complainants invested Rs.10 lakhs each; the accused was inducted as working partner in the business connected with finance and real estate in and around Tambaran area, the accused has replied as under:

"5.My clients state that hundreds of questions would arise on your client's own story. What was the nature of alleged partnership ? Who are all the partners ? What was the understanding? When it was made? What was the investment ? What would be the share of Profit? What is the role of each, either your clients or my client ? What is the nature of business ? And what not ? Your notice is not only lacking such material particulars but prima facie explicates on its own that your clients have conjoined a story with some evil design."

19.Despite specific denial of business relationship by the accused in his reply notice, the complainants have not come forward to prima facie prove that there was, in fact, some business activity in real estate and finance based on the oral partnership agreement. The accused was handling their investment and enriching himself without rendering account and in the course of that transaction, the subject cheques were issued to discharge the liability, he incurred. The complaints as well as the evidence for the PW-1 Ramesh does not disclose anything to substantiate these averments.

20.The date of oral agreement, the manner in which the money was invested, the date on which it was invested, the nature of business carried by the accused with the investment made by the complainant, the basis of the presumptive profit for which the cheques alleged to have given towards part profit are all significant circumstances which the complainants ought to have prima facie substantiated, once the accused has specifically denied the theory of oral partnership business investment. Having failed to place before the court, materials prima facie to show any enforceable liability to discharge in spite of specific denial by the accused in his reply notice, the order of acquittal is legal in all probabilities. No illegality or perversity could be made out from the finding of the lower appellate court.

21.In the result, the Criminal Appeals are dismissed as devoid of merit. The orders passed by the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpattu in Criminal Appeal Nos.23, 24 and 25 of 2010 dated 05.12.2012 are hereby confirmed. The respondent/accused is set at liberty. The fine amount, if any, paid shall be refunded to him. The bail bond, if any, shall stand cancelled.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District & Sessions Judge,
Kancheepuram at Chengalpattu.

2.The Judicial Magistrate,
Alandur.

3.The Principle District Court,
Chengalpattu.

4.The District and Sessions Court,
Chengalpattu.

5.The Joint Secretary to Government,
Prohibition and Excise Department,
Fort Saint George, Chennai-9.

6.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai.

7.The Public Prosecutor,
High Court, Chennai.

8.The Section Officer,
Criminal Section,
High Court, Madras.

+3cc to Mr.L.Prabakaran, Advocate Sr.32661, 32662, 32663
+1cc to Mr.K.Krishnamoorthy, Advocate Sr.32473

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