IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.03.2019
C O R A M
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.169 of 2019

R.Sakthivel ... Appellant/2nd Respondent/Complainant

-Vs-

1.M/s.Gee Vee Kumaravel & Company
Rep. By its Managing Director,
S.Kumaravel,
Door No.269, Ayyappan Koil Street,
Opp. To ACC Gandhi Nagar,
Madukkarai, Coimbatore-641 105.

2.S.Kumaravel
S/o.Sellappan

3.K.Kavitha
W/o.Kumaravel .. Respondents/Appellants/accused 1 to 3

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the order dated 25.10.2018 in CA No.106 of 2017 on the file of the V Additional District and Sessions Judge, Coimbatore, reversing the order dated 27.04.2017 in C.C.No.83 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore.

For Appellant : Ms.AL.Ganthimathi

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J U D G M E N T

This appeal has been filed to set aside the judgement dated 25.10.2018 passed in Crl.A No.106 of 2017 on the file of the V Additional District and Sessions Court, Coimbatore, reversing the order dated 27.04.2017 in C.C.No.83 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore.

2. The appellant is the complainant and he filed the private complaint under section 200 Cr.P.C against the respondent/accused for the offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore. After taking cognizance of the complaint and completing the formalities, the

learned Judicial Magistrate, Fast Track Court No.1, Coimbatore, found guilty of the respondents/accused and convicted the respondents 2 and 3/A2 & A3 and sentenced them to undergo 6 months Simple Imprisonment each and to pay a sum of Rs.4,00,000/- to the appellant/complainant as compensation, in default, 2 months Simple Imprisonment, against which, the respondents/accused filed an appeal in Crl.A.No.106 of 2017 before the learned V Additional District and Sessions Judge, Coimbatore. The learned V Additional District and Sessions Judge, Coimbatore, allowed the appeal on 25.10.2018 by setting aside the judgment of the trial Court. Aggrieved by the said judgment, the appellant/complainant has preferred the present criminal appeal before this Court.

3. The case of the complainant is that on 01.11.2012, the second respondent/A1 on behalf of the first respondent/A1, borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as a handloan, for which, he has paid a part amount of Rs.1,00,000/- (Rupees One Lakh only) to the complainant on 15.04.2013 and issued 2 cheques bearing No.567296 for a sum of Rs.3,00,000/- & bearing No.574421 for a sum of Rs.1,00,000/- dated 21.04.2013 and when the same was presented for collection, it was returned as “Payment Stopped by Drawer” vide memo dated 25.04.2013. The appellant/complainant issued a statutory notice on 22.05.2013, the same was returned with the postal remarks “Left without Intimation” and the notice sent to the address of Madukkari was returned as “Door Locked, Intimation served, refused”. Thereafter, the accused did not give any reply nor settle the amount of the cheques. Hence, the complainant preferred the complaint before the Judicial Magistrate Court, Coimbatore.

4. Before the trial Court, on the side of the complainant, the complainant himself was examined as PW-1 and marked 16 documents. On the side of the respondents/accused, A2 himself was examined as DW-1 and marked 11 documents.

5. After the trial, the learned Magistrate found the respondents/accused guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced them as stated above. There against, the respondents/accused filed an appeal in Crl.A.No.106 of 2017 before the learned V Additional District and Sessions Judge, Coimbatore. The learned V Additional District and Sessions Judge, Coimbatore, allowed the appeal on 25.10.2018 and set aside the judgment of the trial Court.

6. The learned counsel appearing for the appellant would submit that the respondents/accused admitted the transaction and also admitted the signature and also the execution of the cheques. Further, A2 has given undertaking letter-Ex.P1. Once the accused has admitted the transaction and signature, there is

a statutory presumption under Section 118 and 139 of Negotiable Instruments Act. The Cheques were issued to discharge the legally enforceable debt. Though the learned Magistrate rightly found that the respondents/accused guilty, whereas, the learned V Additional District and Sessions Judge failed to appreciate the admission made by the respondents/accused and set aside the judgment of the learned Magistrate. Therefore, the complainant is constrained to file the present appeal before this Court.

7. Heard the learned counsel appearing for the appellant as also perused the materials on record.

8. The complaint filed by the appellant/complainant before the learned Magistrate, which reads as follows:-

> "Accused No.1 is a private limited company and doing business of Transport. Accused No.2 is the Managing Director and Accused No.3 is the Director of Accused No.1. The Accused No.2 is actively attending the day to day affairs of the Accused No.1 and therefore, the Accused No.2 & 3 are jointly and severally liable for the transaction and liabilities of the Accused No.1. Accused No.2 approached on behalf of Accused No.1 and borrowed the sum of Rs.5,00,000/- as a hand loan from the complainant on 01.11.2012 for the purpose of business development of the Accused No.1 and assured to repay the same within a short period. For the repayment of the above said loan, the Accused No.2 paid a part amount of Rs.1,00,000/- to the complainant on 15.04.2013 and on the same day itself, the Accused No.2 handed over the two cheques in favour of the complainant for the remaining amount of Rs.4,00,000/- through the letter of acknowledgement. The details of 2 cheques are a cheque bearing No.567296 for Rs.3,00,000/- dated 21.04.2013 and another cheque bearing No.574421 for sum of Rs.1,00,000/- dated 21.04.2013 and both are drawn on ICICI Bank Limited, Namakkal Branch. The above cheques are signed by the Accused No.2 and both Accused are assured that the cheques would be honoured on presentation. Believing the words of the Accused, the Complainant presented the above said cheques for collection through his Bankers ICICI Bank Limited, R.S.Puram Branch, Coimbatore on 21.04.2013 and the same was dishonoured on 21.04.2013 for the reason "Payment Stopped by Drawer" vide memos dated 25.04.2013. The Complainant issued the legal Notice on 22.05.2013 at the address of Namakkal and Madukkarai, thereby, called upon the accused to settle the amount of cheques. The Notice sent at the address of Namakkal was returned with the postal remark "Left

Without Intimation" and the notice sent at the address of Madukkarai was returned with an endorsement "Door Locked, Intimation Served, refused". Thereafter, the Accused did not give any reply nor settle the amount of cheques. Hence, this complaint has been filed by the complainant."

9. Though the second respondent/A2 taken the defence that he had a transaction with the appellant/complainant and earlier even in the year of 2008, he had money transaction and issued cheques, subsequently, he discharged the amount. When he asked the return of cheques, the complainant stated that he misplaced the cheques and promised him that he would return the same. Subsequently, A2 has issued a public notice on 08.06.2011. Even after the issuance of public notice, the complainant has not returned the cheques. Thereafter, he filled the cheques for the purpose of filing the false case against the respondents/accused and preferred the present complaint before the learned Magistrate.

10. The main contention raised by the learned counsel for the appellant/complainant is that the second respondent/A2 admitted the signature and also the execution of the cheque. Therefore, the second respondent/A2 has to rebut the presumption under Section 139 of the Negotiable Instruments Act. No doubt in this case, though the respondent admitted the signature, he has not issued the cheques for this transaction mentioned in the present complaint. He has issued the cheques for the transaction in the year 2008 and also 2010 and thereafter, he repaid the money. The second respondent came to the witness box and deposed that the appellant and himself are known persons and he borrowed a sum of Rs.3,00,000/- on 21.11.2008 from the appellant/complainant, for which, he had issued cheque bearing No.567296 drawn on ICICI Bank. Subsequently, he sold his house and also repaid the said amount on 12.04.2010 itself and at that time he asked the complainant to return the cheque, but he did not return the same. Thereafter, on 02.07.2009, he again borrowed a sum of Rs.1,00,000/- from the appellant/complainant and issued a cheque bearing No.567421 for the purpose of security. The said amount was also repaid on 20.10.2009 by cheque bearing No.567441. Subsequently, in the year 2009, both the complainant and the second respondent jointly started a business in the name of S.K.Transports along with one Gopinath and they invested a sum of Rs.3,00,000/- each and after 1½ years, the said Gopinath is retired from the Company. Thereafter, the appellant/complainant and the second respondent/A2 had a joint account in the Bank. Since he was working in another place, he was not able to go to the Bank and therefore, he issued 45 blank cheques. There was some misunderstanding between them, they wound up the business and

thereafter, the complainant has not returned the blank cheques. Hence, the second respondent/A2 gave public notice in a daily "Dinamalar" on 08.06.2011. He stated that the cheques in dispute were also not given on the date in which, the appellant/complainant mentioned in the complaint. No doubt the second respondent/A2 admitted the signature found the cheques. Therefore, the initial burden has been shifted from the appellant/complainant to the second respondent/A2. The cheques are not issued for discharging the legally enforceable debt. No doubt this statutory presumption need not be rebutted by direct evidence, he can very well rebut the presumption by preponderance of possibilities or probable defence or through cross examination of the witnesses. In this case, the second respondent/A2 stated that he had a transaction with the appellant/complainant from the year 2008 and after discharging all the loans, he asked the complainant to return the cheques, but he did not return the same. Since the complainant did not return the cheques, he issued public notice in "Dinamalar", whereas, the complainant, on 15.04.2013 filled the cheques for filing the false case against the second respondent/A2. The complainant has produced Ex.P1-Acknowledgement letter, which shows that there was a transaction between the complainant and the accused. It is for the complainant to prove that as to whether the cheques are issued for this transaction, but, he has not proved in the manner known to law. Since the Appellate Court is final Court of fact finding Court, it has rightly appreciated the evidence and came to the conclusion that the respondents/accused has rebutted the presumption by preponderance of probabilities. Therefore, the benefit of doubt extended to the respondents/accused. It is possible that the cheques would have been given to the earlier transaction. It is for the complainant has to prove beyond reasonable doubts that the cheques are issued only for this transaction .

11. The learned counsel for the appellant relied on the judgment of this Court in R.Dennis Raja Vs. T.Subbiah [2018 (3) MWN (Cr.) DCC 100 (Mad.)]. This Court carefully gone through the entire judgement. The facts and circumstances of the above case relied on by the appellant is not applicable to the present case on hand, since in this case the Appellate Court found two views and therefore, the benefit of doubt has been extended in favour of the respondents. On reading of the entire evidence, the appellant/complainant admitted that there was earlier transactions between both the parties. During cross-examination of PW-1, he has not put any question that there was no transaction between the parties on earlier occasion. When the respondents/accused have taken the specific stand that the cheque is issued for earlier transaction and the amount was discharged and also issued public notice in the year 2011 itself, whereas, this complaint has been filed in the year 2013

i.e., two years later. In the circumstances, this Court is also found that there are two views are possible in this case. The benefit of doubt has been extended to the respondents/accused.

12. This Court finds that the Appellate Court has rightly taken the view in favour of the respondents/accused. The respondents have rebutted the presumption by preponderance of probabilities. Hence, there is no merit in the appeal and the appeal deserves to be dismissed.

13. Accordingly, this Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

kmi

To

1.The Judicial Magistrate,
Fast Track Court No.1,
Coimbatore.

2.The V Additional District and Sessions Judge,
Coimbatore.

+1cc to Ms. AL.Ganthimathi, Advocate, SR.No.30817.

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VBA(CO)
CSR:09.01.2020