

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.04.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.63 of 2014

C.Kunchithapatham (deceased)

1.Rajalakshmi

W/o. C.Kunchithapatham

2.Anbumani

S/o.C.Kunchithapatham

3.Arumairaj

S/o.C.Kunchithapatham

4.Jothi

S/o.C.Kunchithapatham

5.Rajendran

S/o.C.Kunchithapatham

6.Nagaraj S/o Kunchithapatham

(Appellants 1 to 6 impleaded as per the order of  
this Court dated 05.06.2013 in M.P.No.2 of 2012)... Appellants

/versus/

Krishnamurthy

.. Respondent/Accused

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the order made in C.A.No.11 of 2008 dated 09.06.2011 on the file of the District and Sessions Judge, Thiruvarur and reversal the order made in C.C.No.413 of 2004 dated 29.08.2005 on the file of the Judicial Magistrate No.I, Mannargudi.

For Appellants : Mr.Thiruvengataswamy

For Respondent : No appearance

J U D G M E N T

Notice sent to the respondent not served, despite the private notice sent to the last known residence as well as the

address in which the respondent living at the time of initiating the complaint in the year 2005.

2. However, on perusal of the record, this Court finds that the finding of the Lower Appellate Court reversing the judgment of the Trial Court is legally sustainable and does not require interference. Hence, without service of notice on the respondent and on perusing the records, this Court passes the following orders:-

3. The case of the appellant is that the respondent herein borrowed a sum of Rs.80,000/- and issued a cheque dated 26.07.2004. When the cheque was presented for collection it was returned with intimation from the bank saying the payment was stopped by the drawer. Hence, notice was issued to the respondent and thereafter, he filed a complaint before the learned Judicial Magistrate No.I, Mannargudi.

4. On receipt of the summons, the respondent appeared before the Court and contested the matter. To prove the complaint, the accused was examined as PW.1 and marked 5 Exhibits, which are the cheque dated 26.07.2004 [Ex.P1], Memo of Drawer bank [Ex.P2], Memo of payee bank [Ex.P3], statutory notice [Ex.P4] and postal acknowledgment [Ex.P5].

5. The Trial Court, considering the facts that the accused has accepted the signature found in the cheque [Ex.P1] and failed to rebut the presumption, though pleaded that the cheque was not issued to the complainant and he has not borrowed any loan from the complainant, having failed to prove through his defence that the subject cheque was issued to one Arumairaj, son of the complainant as a security of the loan of Rs.20,000/- borrowed by him, despite clearing the loan, the blank cheque has been misused by the complainant, has not been accepted by the Trial court. Hence, convicted the accused/respondent and sentenced to undergo 8 months Simple Imprisonment and pay Rs.80,000/- as compensation within a period of 2 months failing which to undergo 4 months Simple Imprisonment. Aggrieved by the judgment of conviction and sentence, the accused has preferred the appeal before the District and Sessions Court, Thiruvavur.

6. The Lower Appellate Court has taken note of the fact that the complaint as well as the statutory notice do not disclose the date, time and place of borrowing. The accused has instructed the bank to stop the payment and the complainant has failed to establish that the cheque was issued without sufficient fund. Further, holding that having rebutted the presumption of enforceable debt, the complainant has failed to produce documents to indicate that the subject cheque Ex.P1 was

issued for enforceable debt. Taking note of the fact that the cheque was signed by the accused as proprietor of M/s.Krishna and Company. Even according to the complainant his son Arumairaj was employed in M/s.Mannargudi Marketing Society as a Salesman and the accused had business transaction only with M/s.Mannargudi Marketing Society as a proprietor of M/s.Krishna and Company. While so, without any material facts regarding how the liability arose to issue the subject cheque, the advantage of presumption under Section 139 of Negotiable Instruments Act is not available to the complainant and failure to adduce positive evidence to substantiate his claim is liable for dismissal.

7. The reasoning given by the Lower Appellate Court for reversing the finding of the Trial Court is legally sustainable in accordance with law and facts and having claimed that a sum of Rs.80,000/- was borrowed from him by the respondent and to discharge the debt, the subject cheque Ex.P1 was issued, at least minimum information about the date of borrowing and the place of borrowing should have been mentioned in the complaint as well as the statutory notice. To add the respondent has taken a plea that the complainant is unknown person to him and the cheque was not issued to him. While so in the absence of material evidence how the cheque came to the possession of the complainant, the complaint is unsustainable.

8. Hence, the appeal is dismissed. The judgment of the Lower Appellate Court is hereby confirmed.

Sd/-  
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

rpl  
To

- 1.The Judicial Magistrate No.I, Mannargudi.
2. -do-Through the Chief Judicial Magistrate, Thiruvarur.
- 3.The District and Sessions Judge, Thiruvarur.

Copy To : The Section Officer, Crl. Section, High Court

+1cc to Mr.Thiruvenkataswamy, Advocate SR.No.38501

Crl.A.No. 63 of 2014

VG I(CO)  
GMY(26/06/2019)