



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.A.(MD)No.357 of 2009

WEB COPY

K.Bright Jayakumar

... Appellant/Complainant

versus

R.Selvin Loyd

... Respondent/Accused

Criminal Appeal filed under Section 378(4) of Cr.P.C. against the Judgment dated 15.05.2007 made in S.T.C.No.93 of 1999 on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel.

For Appellant	:	Mr.K.Sreekumaran Nair
For Respondent	:	No appearance

JUDGMENT

This appeal arises out of the Judgment dated 15.05.2007 made in S.T.C.No.93 of 1999 on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel, in and by which, the learned Judge acquitted the accused/respondent herein from the charge of offence under Section 138 of Negotiable Instruments Act.

2. The appellant as a complainant preferred a complaint under Section 138 of the Negotiable Instruments Act stating that the respondent/accused borrowed a sum of Rs.1,25,000/- from the appellant on various dates, i.e. on 22.01.1998, 02.02.1998, 21.03.1998 and 15.09.1998. For repaying the said amount, he issued a cheque on 31.10.1998, drawing on Tamil Nadu Mercantile Bank, Kollachal Branch. Since the respondent/accused has not repaid the said amount, he presented the cheque before the Bank. But, the said cheque was returned with an endorsement "insufficient funds". Therefore, the appellant/complainant issued a statutory notice to the respondent/accused on 12.11.1998 and the same was returned as "refused". Therefore, the appellant/complainant was constrained to file a private complaint under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act before the learned Principal District Munsif cum Judicial Magistrate, Eraniel.

2.1. The learned Magistrate took the cognizance of the complaint in STC No.93 of 1999 and after the receipt of the summons, the respondent/accused contested the case. During the



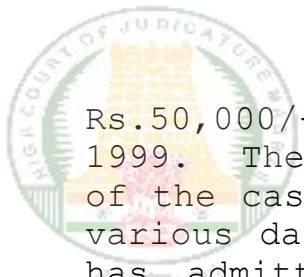
respondent/accused also repaid a sum of Rs.50,000/- on various dates and the same have also been endorsed by the learned Magistrate in the adjudication order. Subsequently, he has not repaid the balance amount of Rs.75,000/-. However, the learned Magistrate, by Judgment dated 15.05.2007, dismissed the complaint and acquitted the respondent/accused. Aggrieved over the Judgment of the learned Magistrate, the complainant/appellant has preferred the present appeal before this Court.

3. Heard the learned counsel for the appellant. However, none appeared for the respondent/accused.

4. The learned counsel for the complainant/appellant submitted that the respondent/accused borrowed a sum of Rs.1,25,000/- on various dates and also issued a cheque on 31.10.1998 for a sum of Rs.1,25,000/- and since he has not repaid the said amount, the appellant presented the cheque for collection, but, the same was returned for insufficient funds and therefore, he issued a statutory notice on 12.11.1998 and the respondent/accused refused to receive the said notice. Therefore, he filed a complaint before the learned Principal District Munsif cum Judicial Magistrate and during the pendency of the case, the respondent/accused admitted the liability and repaid a sum of Rs.50,000/- on various dates before the Magistrate and subsequently, he has not repaid the balance amount of Rs.75,000/-. But, the learned Magistrate has not considered the said aspect, though the respondent/accused admitted the execution of the cheque and the signature of the cheque. The learned counsel further submitted that since the cheque was issued for discharging the legally enforceable debt, it is for the respondent/accused has to rebut the presumption, which is a statutory presumption under Section 139 of the Negotiable Instruments Act. But, the respondent/accused has not rebutted the same. The learned Magistrate also failed to consider the statutory provision, stating that the complainant/appellant has not produced the documents. Therefore, the Judgment of the learned Magistrate warrants interference.

5. Though none appeared on behalf of the accused/respondent, this Court heard the learned counsel appearing for the appellant and perused the entire materials available on record.

6. Though the accused/respondent admitted that he borrowed a sum of Rs.50,000/- from the complainant/appellant, for which, the complainant/appellant obtained a promissory note for sum of Rs.50,000/- and also obtained a cheque for a sum of Rs.50,000/- and also he obtained signature in a blank cheque and on various dates, the accused/respondent has repaid the amount upto



Rs.50,000/- during the pendency of the case in S.T.C.No.93 of 1999. The adjudication order also shows that during the pendency of the case, the respondent repaid some amount in installments on various dates. But, even in the evidence, the accused/respondent has admitted that he borrowed a sum of Rs.50,000/- and also executed a cheque and promissory note which was repaid by him. But, the accused/respondent denied the fact that he has borrowed a sum of Rs.1,25,000/- and executed a cheque for Rs.1,25,000/- .

7. Once the cheque has been issued and the signature is also admitted, the appellant is entitled to invoke presumption under Section 139 of the Negotiable Instruments Act as per the decision of the Apex Court reported in **2010 (2) MWN (Cr.) DCC 5 (SC) (Rangappa vs. Sri Mohan)**, the appellant is entitled to invoke presumption under Section 139 of the Negotiable Instruments Act. It is true that it is a rebuttable presumption. It is settled law that accused need not rebut the presumption by direct evidence it can be done either by preponderance of probabilities or probable defence even otherwise through cross examination of the witnesses.

8. In the present case, the accused/respondent herein, in his evidence, has admitted that he borrowed a sum of Rs.50,000/- and he also repaid the same. Therefore, it is clear that the accused/respondent has rebutted the presumption by preponderance of probabilities that he borrowed only Rs.50,000/- not 1,25,000/-. The appellant has stated that he has documents to show that the respondent borrowed Rs.1,25,000/-, but he has not produced any documents. .

9. The appellant herein, in his evidence, has admitted that he is doing finance business and he is also having licence for the same. He has also admitted that he maintained an account for lending money to the respondent. However, the appellant has not produced any records to show that the accused/respondent herein borrowed a sum of Rs.1,25,000/-. Therefore, the learned Magistrate found that during the cross examination, the accused/respondent herein admitted that he borrowed only a sum of Rs.50,000/-, for which, he issued a promissory note, but, he denied a suggestion that he borrowed a sum of Rs.1,25,000/- from the appellant/complainant.

10. Therefore, once the appellant has admitted that he has maintained an account to show that the respondent borrowed a sum of Rs.1,25,000/-, however, he failed to produce records with regard to the same. When a person fails to produce the records or evidence, then, the Court can draw adverse inference as against that person, who is withholding/maintaining the documents.



11. This Court finds that the accused/respondent herein admitted that he borrowed a sum of Rs.50,000/- only and he has repaid the said amount and further, he also stated that he has not borrowed a sum of Rs.1,25,000/-. Therefore, the respondent has rebutted the presumption. Since the respondent has rebutted the presumption, then, the burden is shifted to the appellant to prove his case. Therefore, it is for the appellant to prove his case, by producing documents, which is said to be in possession of the appellant that the respondent borrowed a sum of Rs.1,25,000/- and issued a cheque for Rs.1,25,000/-, but, he has not repaid the same.

12. Under such circumstances, this Court finds that there is no perversity in the Judgment dated 15.05.2007 passed in S.T.C.No.93 of 1999 by the learned Principal District Munsif cum Judicial Magistrate, Eraniel and there is no reason to interfere with same. Therefore, the appeal is liable to be dismissed.

13. In fine:

a) The Criminal Appeal is dismissed.

c) The Judgment dated 15.05.2007 made in S.T.C.No.93 of 1999 on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel, is hereby confirmed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

The Principal District Munsif cum
Judicial Magistrate,
Eraniel.

Crl.A. (MD) No.357 of 2009
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