IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 19.08.2021	Date of Pronouncing Order 20.09.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.253 of 2015

R. Manikannu .. Appellant/Respondent/Complainant

Vs.

A.R. Bathrudeen .. Respondent/Appellant/Accused

PRAYER : Criminal Appeal is filed under Section 378(2) of Criminal Procedure Code, against the judgment dated 13.01.2015 made in Crl.A.No.22 of 2014 passed by the learned I Additional District and Sessions Judge, Tindivanam by reversing the finding and set aside the conviction and sentence to undergo six months simple imprisonment and to pay the cheque amount of Rs.20,00,000/- as compensation under Section 357(3) of Cr.P.C., imposed by the learned District Munsif cum Judicial Magistrate in C.C.No.177 of 2012 by its judgment dated 30.05.2014 and acquitted the respondent/accused from the offence under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.P.Palaninathan
For Respondent : No appearance

J U D G M E N T

The matter is heard through "Video Conference".

2. The complainant is the appellant herein.

3. The criminal appeal has been filed against the judgment dated 13.01.2015 made in Crl.A.No.22 of 2014 passed by the learned I Additional District and Sessions Judge, Tindivanam by reversing the finding and set aside the conviction and sentence to undergo six months simple imprisonment and to pay the cheque amount of Rs.20,00,000/- as compensation under Section 357(3) of Cr.P.C., imposed by the learned District Munsif cum Judicial Magistrate in C.C.No.177 of 2012 by its judgment dated 30.05.2014 and acquitted the respondent/accused from the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the appellant would contend that the respondent-accused admitted the issuance of cheque and hence he is entitled for presumption under Section 139 of the Negotiable Instruments Act and therefore, it is for the

respondent-accused to rebut the same in the manner known to law. In the instant case, they have not done so. There is no representation on behalf of the respondent. It is an appeal against the acquittal order passed by the Lower Appellate Court.

5. Record reveals that the complainant had filed the complaint stating that the accused has borrowed a sum of Rs.20,00,000/- from him and had issued a cheque as Ex.P1 dated 24.06.2012. Complainant presented the cheque for collection with his banker Tamilnadu Mercantile Bank Limited, Pondicherry through Ex.P2 challan dated 23.07.2012. It has been returned by Ex.P3 memo as "Insufficient Funds" on 24.07.2012 with endorsement. Then the complainant sent a legal notice Ex.P4 and Ex.P5 dated 26.07.2012 to the house of accused which was returned with an endorsement unclaimed and the returned cover as Ex.P7 and another notice to his shop which was served through acknowledgment Ex.P6. The accused has issued a cheque knowing that he did not have sufficient funds in his account.

6. The suggestive case of the defence is that there was a sale agreement between the parties namely wife and brother-in-law of the private complainant and he borrowed Rs.3 lakhs, as a security, they have executed the said sale deed and repaid the amount by issuance of cheque and dates and details of the said payment is made and the blanked cheque given for security has been misused.

7. To substantiate the same, the accused examined his wife who stated that her husband borrowed a sum of Rs.3,00,000/- on 08.01.2010 from the complainant. The complainant obtained blank signed pro notes and blank signed cheques from the accused and also a sale agreement Ex.P2 dated 08.01.2010 from the complainant. The complainant obtained blank signed pro notes and blank signed cheques from the accused and also a sale agreement Ex.P2 dated 08.01.2010, from her as a security for the loan advance. The sale consideration is Rs.4,00,000/- in which Rs.3,50,000/- has been shown towards advance. Similarly, another sale agreement Ex.D1 has been executed by brother-in-law of the accused for a sale consideration of Rs.8,00,000/- in which Rs.7,00,000/- has been shown as advance. Accused has paid the loan amount of Rs.3,00,000/- but, the complainant refused to return the documents but has sent a notice Ex.D3 dated 11.12.2012 to wife of accused seeking specific performance of her property. Further, a false complaint has been filed by filling the blank signed cheque issued by the accused.

8. The specific evidence of P.W.1 is that as stated in the complaint, the three Judges' Bench of Hon'ble Supreme Court in the decision reported in (2010) 1 SCC 389 (Rangappa Vs. Sri Mohan), it is held as follows:

> "In the 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".

9. As the respondent-accused has not disputed the signature and it is from the account of the respondent/accused. The appellant-private complainant is entitled to presumption under Section 139 of the Negotiable Instruments Act and thus, it is for the accused to rebut the same up to the level of preponderance of probability, as held by the Hon'ble Supreme Court in (2008) 4 SCC 54 (K.Prakashan Vs. P.K.Surenderan), it is held as follows:

> "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."

10. P.W.1, specifically deposed that he has paid Rs.20 lakhs for improving the business of the accused and in turn, he has executed Ex.P1. He has not stated in Exs.P4 and P5, as to the date on which a loan was given to the accused. In other words, neither in Exs.P4 or P5, there was no mentioning of date or details of payment made by the accused, especially, when the loan amount borrowed is Rs.20 lakhs, the complainant has given the loan of such a huge amount of Rs.20 lakhs. He could have mention the date on which he had given the loan and hence, the non mentioning of date of giving loan amount in the complaint in his evidence as P.W.1, assumes significance.

11. In the cross examination, P.W.1, had categorically admitted that he has not received any document from the accused for borrowing the loan amount of Rs.20 lakhs in the year, 2012, is a very huge amount. Without getting any document, evidencing such a transaction or hand loan to the extent of Rs.20 lakhs, without getting any document as a collateral, the Hon'ble Supreme Court reported in A.I.R.2008, SC page 278 = 2007 (12) SCC page 71 in John K.John Vs. Tom Varghese and another, has held as follows:

> "The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the Court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged".

12. Hence, the contact of the parties mainly complainant in

lending Rs.20 lakhs as a hand loan, without getting any document and the interest evidencing such a payment or as a collateral is not a conduct of any reasonable or prudent man, this also create another suspicion and the level of suspicion assumes greater importance. In view of the further cross examination as noticed by this Court.

13. On perusal of the entire evidence of cross examination of P.W.1, neither in the notice nor in the complaint nor even in the evidence P.W.1, how he was able to give such amount to the accused, whether he paid Rs.20 lakhs in cash or by way of cheque remains mystery.

14. As per the admission given by the complainant he states that he has taken money from the bank as Rs.1,00,000/- or Rs.2,00,000/- on various occasions and has accumulated the amount. If, actually he was having the entire amount in the bank why he should withdraw as Rs.1,00,000/-, Rs.2,00,000/- on many occasions. He has further added that he has not shown it in the income tax account. He has also taken another stand by stating that he was having some amount in his house. So the complainant has no definite case, as to where from he has taken such huge amount either from the bank or he was having money in his house. Non mentioning of such a huge transaction in the income tax would also strengthen the doubt that he would not have given such a huge amount towards loan. Besides, the complainant has not even whispered even a single word as to the date on which as to how many months after giving a loan he has received a cheque from the accused.

15. It remains to be stated that on close perusal of cross examination on 29.04.2013, 07.11.2013, 28.11.2014, it is a specific evidence that the complainant did not have any transaction, earlier to this transaction and subsequent to this transaction. But, in another part of the cross examination, he categorically admitted that he had received Rs.2 lakhs on 28.12.2011, Rs.41,300/- on 15.06.2010, Rs.40,000/- on 21.04.2011 Rs.40,000/- through cheque No.460297 so totally 3,21,300/- has been paid by the accused to the complainant on various occasions in the year 2010 and 2011. The present transaction is said to have taken place in the year 2012. It is his admission that he had no transaction with the accused earlier 2012. What the complainant has stated on earlier occasion has been proved to be false at a later stage by giving the cheque details and the payment details given by the accused. Hence, the accused was able to establish that the complainant is not a witness of truth and reliability.

16. Furthermore, in order to probabilise the suggestive case of the accused, D3 and D4 were marked through D.W.1. D.W.3 is the legal notice issued by the wife of the accused and D2 is the certified copy of the sale agreement entered between the parties. D3 notice confirms that there a transaction between

the complainant and the wife of the accused on 08.01.2010. Though, in the initial cross examination, it was denied by P.W.1, however, in the later part, he has accepted it. The complainant admitted the sale agreement entered between him with his brother-in-law of the accused on 04.01.2010.

17. Taking into the close dates between the parties and the date of the sale agreement with that of the date of the cheque, the lower appellate Court has rightly come to the conclusion that within a week, two sale agreements have been executed by wife of the accused and brother-in-law of the accused and marking of the documents D1 and D3, the accused has successfully demonstrated that various sale agreements, as a security, for this loan transaction was originally entered between the parties and the said amount of Rs.3 lakhs, was duly repaid by two cheques dated 28.12.2011 and the same was duly honoured and further payment of Rs.41,300/- was also duly honoured by payment of cheque and thus, I find that the suggestive case of the defence has been successfully demonstrated by more than preponderance of probability from the answer elicited in the cross examination of P.W.1 and D.W.1 and D3 and D2 sale agreements and I find that the complainant has not come to the Court with clean hands. The accused has successfully demonstrated the suggestive case.

18. From the evidence discussed, the cheque is a blank signed cheque for two sale agreements and there is another case filed by brother-in-law of the complainant in Puducherry area and in respect of the amount received, there are also duly repaid the amount by cheque, the same was duly encashed, as per admission of P.W.1 in the cross examination and hence, the accused has successfully discharged the burden of proof by preponderance of probability by establishing that such a huge amount has not been given as a loan by the complainant and in view of such finding, it is again for the complainant to prove that he had source of income to lend such a huge amount of Rs.20,00,000/-.

19. Admittedly, he had not filed any document to show that he had possessed such huge amount of Rs.20 lakhs. In the cross examination, he had categorically admitted that he had initially paid Rs.1 lakh, and subsequently, he has developed the corpus to lend Rs.20 lakhs and he admitted that he had not disclosed the same in the income tax returns and for which, he has also paid income tax for the said amount. However, he has categorically admitted that he has not disclosed the loan of Rs.20 lakhs given to the accused in the income tax return.

20. In view of the admission in the cross examination and the specific evidence that Rs.20 lakhs given from his saving and tax has been duly paid. However, he has not reflected in the income tax return nor he has filed any document after the cross examination of P.W.1 to show the said statement. Accordingly,

the lower appellate Court has rightly disbelieved the said version. So, the complainant has no definite case as from where he has taken such a huge amount either from the bank by way of withdrawal or he was having as a saving on his own. Besides non mentioning of such a huge transaction in the income tax also cause serious doubt.

21. On the above back ground, this Court finds that non mentioning of date on which and for how many months after giving the loan, he had received Ex.P1 cheque from the accused, assumes vital importance and hence, on the above factual position, I find that after rebuttal of evidence, the pendulum of burden of proof, having oscillated towards the complainant, the complainant is duty bound to prove that there was a source of income to pay such amount he having failed, has to fail and hence, the finding rendered by lower appellate Court is not perverse and the same do not suffer from any irregularity or illegality warranting interference in this appeal and hence, the criminal appeal stands dismissed as devoid of merits.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AT

To

1.The I Additional District and Sessions Judge,
Tindivanam.

2.The District Munsif cum Judicial Magistrate,
Vanur, Tindivanam.

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

+2cc to Mr.S.D.Dawoodkhan, Advocate, S.R.No.48076
+1cc to Mr.P.Palaninathan, Advocate, S.R.No.48051

Crl.A.No.253 of 2015

SRA(CO)
GN(11/10/2021)