IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2021

PRONOUNCED ON : 01.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.A.NO.641 OF 2015

K.Amudha Priya

... Appellant/Complainant

Vs.

S.Sridhar

... Respondent/Accused

Prayer: This Criminal Appeal has been filed under Section 378 of the Criminal Procedure Code, to set aside the order passed by the learned Principal Sessions Judge, Chennai dated 18.02.2014 in Criminal Appeal No.184 of 2012 and confirm the order passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore in C.C.No.3201 of 2012 and convict the Respondent/Accused for offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.S.R.Raghunathan

For Respondent : Mr.V.Vijayakumar

JUDGMENT

(The case has been heard through Video Conference)

The unsuccessful private complainant is the appellant herein.

2.This appeal has been filed against the order dated 18.02.2014 made in Criminal Appeal No. 184 of 2012, on the file of the learned Principal Judge, Chennai, wherein, the learned judged has reversed the order of the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, in C.C.No.3201 of 2012, dated 27.09.2012.

3.For the sake of convenience, the parties are referred to complainant and the accused as per the rankings before the Trial Court.

4.The private complainant has filed a private complaint under Section 200 of Cr.P.C for the offence under Section 138 of the Negotiable Instruments Act, against the accused, for the dishonoured cheque to the tune of Rs.13,44,976/- and the same is taken on file as C.C.No.355 of 2006 before the learned Judicial Magistrate, Ambattur and the learned Judge had transferred the said C.C. to the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai and renumbered as C.C.No.3201 of 2012.

5.After the Trial, the learned Metropolitan Magistrate, Fast Track Court No.I, has convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay cheque amount of Rs.13,44,976/- as compensation within a period of one moth from that day, in default to undergo simple imprisonment for a period of three months. Aggrieved by the said conviction and sentence, the accused has preferred criminal appeal in Crl.A.No.184 of 2012, before the Court of Sessions, Chennai and by order dated 18.02.2014, the learned Judge has allowed the appeal. Hence, the present Criminal Appeal has been preferred by the complainant before this Court.

6.Heard the learned counsel for the appellant and the respondent and perused the materials placed on record.

7.Brief facts leading to file of the private complaint are as under:

a) The complainant is the proprietor of “C.P.K.Leathers” an exporter. The accused is the Commission Agent in leather business and had a good acquaintance with the complainant's husband viz., C.P.Siva Arasu. Due to this advantage, the accused had received advance amount on the commission, for which the accused has to procure orders for the complainant.

b) On the business transaction with the complainant, the accused owe a sum of Rs.81,190/- and Rs.5,13,994/- in two Company's account viz., “Sun Shine Trading Company” and “Macsun India” Account respectively.

c) The accused failed to procure orders as well fail to repay the said advance amount. Finally gave the following four cheques:

(i)Cheque bearing No:614377, dated 14.02.2006 drawn on Canara Bank, Park Town Branch for a sum of Rs.81,130/- [Rupees Eighty One Thousand One Hundred and Thirty only]

(ii)Cheque bearing No:614379, dated 28.02.2006, drawn on Canara Bank, Park Town Branch for a sum of Rs.5,13,994/- [Rupees Five Lakhs Thirteen Thousand Nine Hundred Ninety Four only]

(iii)Cheque bearing No:614380, dated 21.03.2006 drawn on Canara Bank, Park Town Branch for a sum of Rs.1,02,220/- [Rupees One Lakh Two Thousand Two Hundred Twenty only]

(iv)Cheque bearing No:614381, dated 11.03.2006, drawn on Canara Bank, Park Town Branch for Rs.6,47,632/- [Rupees Six Lakhs Forty Seven Thousand Six Hundred Thirty Two only]

d)The first two cheques were issued for repaying the advance amount and the remaining cheques were issued for interest for the dues.

e)After two months, all the cheques were presented for collection before the Indian Bank, Purasawakkam and they were dishonored as “Account Closed” on 28.02.2006. The same was duly intimated to the complainant on 14.05.2006 through separate return memos, by the Payee Banker.

f) On 26.04.2006 the complainant had sent a statutory notice under Section 138(b) of the Negotiable Instruments Act and the same was duly served on the accused on 28.04.2006.

g)The accused replied to the statutory notice and denied the liability and stated that those cheques were handed over to C.P.Siva Arasu only for security purpose, since the transaction between them is based on “commission”.

h)The complainant not satisfied with the reply, has lodged the complaint before the Judicial Magistrate, Ambattur.

8.Exs.P1 to P4 are the cheques, dated 28.02.2006, 14.02.2006, 21.03.2006 and 11.03.06 and cheques representing the amounts viz., Rs.81,130/-, Rs.5,13,994/-, Rs.1,02,200/- and Rs.6,47,632/- respectively. On a perusal of the return memo/Ex.P5, all the cheques when presented for encashment were dishonoured.

9.The suggestive case of the defence is that the cheques were handed over only towards security in the course of the business transaction to one Siva Arasu and he had presented some of the cheques to this complainant. The issuance of the cheuqe and signature in the cheuqe are not disputed by the accused. The accused has arrayed as proprietary of the Sun Shine Trading Company. Though a point has been raised that he being the Letter of Authority cannot be prosecute in the business of the proprietary, this Court does not find any legal ground to sustain the same.

10.Further, the accused was duly represented as Proprietary of the Firm and he signed as a Letter of Authority, since he is a Proprietary of the Firm, the complaint is maintainable, in view of the settled position in connection with the Proprietary of the Firm. Since, the signature in Exs.P1 to P4/cheques are not disputed as that of the accused and the same were dishonoured. The private complainant is entitled for presumption under Section 138 of the Negotiable Instruments Act and it is for the accused to rebut the same.

11.To rebut the presumption, it is not necessary for the accused to get into witness box or adduced any evidence. It is always open to the accused to make use of the materials available on record and to probablise the suggestive case to the level of preponderance of probability.

12.The case of the accused is that he is a Commission Agent of one Siva Arasu and he used to receive advance commission in the business from the said Siva Arasu and during such business transaction, the said Siva Arasu had obtained many blank cheques as security and on closure of his business, he had transmitted some of the cheques to this complainant and through the complainant, he had falsely filed this case. According to the accused, the cheques were handed over only towards security in the course of business transaction.

13.Further, according to the accused, this case has been initiated at the behest of C.P.Siva Arasu, through his wife/private complainant viz., K.Amudha Priya against the mandate holder. The said K.Amudha Priya was examined as PW1. In the cross examination, she admitted that accused is a Commission Agent and he had transaction with C.P.K.Leathers. Further, PW1 has admitted that the accused had received advance towards commission payable to him for the proposed placement of orders with her. According to her, a sum of Rs.81,130/- is due and payable under Sun Shine Trading Company and Rs.5,13,994/- is payable under Macsun India, as the accused never procured any order. For discharge of the said liability, the accused had issued two cheques. She would further claim that cheque dated 21.03.2006 for a sum of Rs.1,02,220/- and cheque dated 11.03.2006 for a sum of Rs.6,47,632/- were issued to her towards interest on the said advance amounts.

14.Further, PW1 had admitted in her cross examination that she is the proprietor of “CPK Leathers”. As the business transaction the accused has to owe a sum of Rs.13,45,000/- to her firm and her husband C.P.Siva Arasu is responsible for her business activities and she is not aware about the business transactions. Further, she admitted that she did not produced the “Books of Accounts” of her own company to prove the case of lending money to the accused and she had not explained to the Court that what was the period of interest and how to calculate the cheques pertains to the sum of Rs.1,02,220/- and Rs.6,47,632/- issued as interest for the existing dues.

15.In view of the answer elicited in the cross examination of PW1, it clear that the accused has to owe a sum of Rs.13,45,000/-, to her husband. According to her, a sum of Rs.81,190/- is due payable under “Sun Shine Trading Company” and Rs.5,13,994/- is due payable under “Macsun India”. As the accused never procure any order and that represents the two cheques and other two cheques namely one for a sum of Rs.1,02,220/- and another cheque for a sum of Rs.6,47,632/- are due in view of the interest payable on the advance amount.

16.Admittedly, no books of accounts have been filed before the Court to show that the accused owed money as claimed by PW1 and there was an agreement to pay the interest amount in default of the repayment of the principal amount.

17.Admittedly, she is not aware in the business transaction between the complainant and the accused and her husband is responsible for business activity. Furthermore, she has not produced books of accounts for the Company though she said she willing to produce the same and no calculation sheet has been filed to show the period of interest and rate of interest and principle amount. In other words, in view of the answer elicited in the cross examination of the PW1, the suggestive case of the defence that he has not received any amount from the complainant, a cheque that was given to complainant has also probablise the suggestive case to the preponderance of probability level that passing of consideration is doubtful as claimed by PW1.

18.In view of the suggestive case being made probable by the accused, it is the duty of the private complainant to prove the existence of the legally enforceable debt. As stated supra neither the person responsible in business activity namely her husband viz., C.P.Siva Arasu, was examined before the Court nor any account books have been produced to show that initially an amount of Rs.81,130/- was paid to Sun Shine Trading Company and Rs.5,13,994/- is due for Macsun India limited. Hence, the Lower Appellate Court has rightly come to the conclusion that the after rebuttal of presumption by the accused, the private complainant has not demonstrate before the Court regarding pre-existing legally enforcible debt and in the absence of the same the Sessions Court, Chennai has rightly allowed the appeal and convicted the accused as stated supra.

19.In the absence of any positive evidence to prove the pre-existing legally enforceable debt, this Court does not find any reasons to interfere with the order passed by the Courts below.

20.In view of the above, this Criminal Appeal is hereby dismissed. The order passed by the learned Principal Sessions Judge, Chennai dated 18.02.2014 in Criminal Appeal No.184 of 2012 by confirming the order passed by the learned Metropolitan

Magistrate, Fast Track Court-I, Egmore in C.C.No.3201 of 2012 is hereby confirmed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To:

1. The Principal Sessions Judge,
   Chennai.

2. The Metropolitan Magistrate,
   Fast Track Court-I,
   Egmore, Chennai.

+1cc to M/s.R.Vaishali, Petitioner, Advocate, S.R.No.51443

+1cc to Mr.V.Vijayakumar, Respondent, Advocate, S.R.No.51030

Crl.A.No.641 of 2015

NR(CO)
RLP(02/11/2021)