



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2021

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.A(MD)Nos.196 and 197 of 2021

WEB COPY

1.Jeyaraman Chettiyar (Died)

2.Sarojini

: Appellants/Complainants
(In both the Criminal Appeals)

Vs.

Asan Aliyar

: Respondent/Accused
(In Crl.A(MD)No.196 of 2021)

Jeyapandiyan

: Respondent/Accused
(In Crl.A(MD)No.197 of 2021)

Common Prayer: Criminal Appeals have been filed under section 378 of the Criminal Procedure Code, against the judgment of the Judicial Magistrate, Paramakudi, passed in STC Nos.2440 and 2441 of 2019, dated 04.11.2019, respectively.

For Appellants : Mrs.Lakshmi Gopinath
(in both appeals) for M/s.Polax Legal Solutions

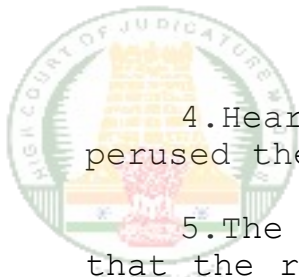
For Respondent(s) : Mr.N.Ananthapadmanabhan
(in both appeals) for M/s.APN Law Associates

COMMON JUDGMENT

These Criminal Appeals have been directed against the judgment of the Judicial Magistrate, Paramakudi, passed in STC Nos.2440 and 2441 of 2019, dated 04.11.2019, respectively.

2.It is seen from the records that the 1st appellant/complainant (since deceased) sold some properties to the respondents/accused, for which the respondents have paid only a portion of sale consideration and issued two cheques for a sum of Rs.42,50,000/- each (Cheque No.179139 issued by Jayapandian and Cheque No.885485 issued by Asan Ali). When they were presented for collection, they were dishonoured stating the reason "Stop Payment" as per the instruction of the respondents/accused. Hence, these cases.

3.Both the Accused were summoned. Notice under Section 251 Cr.P.C was served upon each accused, to which they pleaded not guilty and claimed trial. After completing trial, vide separate order, dated 04.11.2019, learned Judicial Magistrate, Paramakudi, acquitted both the accused. Challenging the same, the appellants are before this court.



4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. The main contention raised on the side of the appellants is that the respondents/accused admitted the signature in the disputed cheques and until and unless contrary is proved, it is presumed that the respondents/accused only issued the disputed cheques and further, the respondents/accused failed to rebut the presumption and hence, the respondents/accused are liable to be punished under section 138 of the Negotiable Instruments Act and prays that the Criminal Appeals have to be allowed.

6. On the other hand, the learned counsel appearing for the respondents/accused submitted that the complainant and the respondents/accused entered into the sale agreement and the respondents/accused gave a part of the sale consideration and they are liable to pay the balance consideration and they have also agreed to pay the balance consideration and for that, the respondents/accused gave the disputed cheques as security and there was no enforceable debt and there are encumbrances in the alleged suit properties and as the complainant failed to rectify the encumbrance, the respondents/accused sent notice calling upon the complainant to rectify the defects, but the complainant failed to rectify the encumbrance and hence, the respondents/accused retained the balance sale consideration with them and hence, the respondents/accused rebutted the presumption and they are not liable to pay any amount to the complainant and hence, the trial Court correctly came to the conclusion that the disputed cheques were given as security for payment of balance consideration and prays for dismissal of the Criminal Appeals.

7. The case of the complainant is that the respondents/accused gave the disputed cheques for the balance sale consideration. But the defence taken by the respondents/accused is that in respect of the suit property, there was encumbrance and they asked the complainant to rectify the encumbrance, but the complainant failed to rectify the encumbrance and hence, the respondents/accused retained the balance sale consideration and sent notice to that effect and after receipt of the notice, the complainant failed to rectify the encumbrance and the respondents/accused gave the disputed cheques as security and hence, they rebutted the presumption and the disputed cheques were given only for security purpose and the respondents/accused are not liable to be punished under section 138 of the Negotiable Instruments Act.

8. In this case, the respondents/accused sent a notice calling upon the complainant to rectify the encumbrance in respect of the suit property and they retained the balance sale consideration and then, they issued the disputed cheques only for security purpose, but the complainant failed to rectify the defects and hence, they



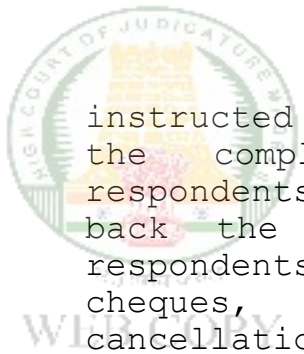
there was no enforceable debt and hence, the respondents/accused are not liable to pay any amount under the disputed cheques.

9.The property originally belonged to one Vasantha and others. The above persons executed a Power Deed to the complainant Jeyaraman Chettiyar to sell their properties and as per the Power Deed, the complainant Jeyaraman Chettiyar sold the properties of the above persons to the accused Asan Aliyar and Jeyapandian.

10.It is seen that this case was filed by one Ramamoorthy as Power Agent of the complainant Jeyaraman Chettiyar. Now the complainant Jeyaraman Chettiyar died and hence, his wife namely Sarojini was added as party. It is an admitted fact that Jeyaraman Chettiyar is the Power Agent of the original owners and he is not the real owner of the property. No document was filed to prove that Jeyaraman Chettiyar is the original owner of the property. Further, the Power Deed executed in favour of Ramamoorthy was not filed before the trial Court. The complainant stated that an agreement arose between him and the respondents/accused and the total sale consideration is paid to the tune of one Crore and Fifty Lakhs and the respondents/accused paid Rs.65,00,000/- and the balance to be paid is Rs.85,00,000/- and the respondents/accused agreed to pay the balance consideration and for that, they gave the disputed cheques, but they failed to pay the balance sale consideration and hence, there was enforceable debt and the respondents/accused are liable to be punished under section 138 of the Negotiable Instruments. To prove the above fact that there was an agreement between the complainant and the accused, the alleged agreement was not produced on the side of the complainant. It was also admitted by the complainant during his cross examination before the trial court. Hence, it creates doubt about the case of the complainant.

11.In this case, PW1 stated that already the complainant purchased the property from the original owner and paid the entire sale consideration. To prove it, no document was filed. It was also admitted by PW1 during his cross examination. To prove that the original owner received the entire sale consideration, the original owner of the property was not examined. Without filing any document to show that the complainant is the real owner, the evidence of PW1 stating that now, the complainant is the owner of the property is not at all acceptable.

12.In this case, the respondents/accused stated that at the time of execution of the sale agreement, the disputed cheques were issued, but the complainant has not presented the cheques for collection and he presented the cheques for collection only on 05.01.2012.The complainant admitted during his cross examination that the disputed cheques were issued at the time of execution of the sale deed and then, the respondents/accused on 05.01.2012 filled the date in the alleged cheques and then, the complainant presented the cheques for collection. Before that, the respondents/accused



instructed their Bank for stop payment. Further, it was admitted by the complainant during his cross examination that the respondents/accused promised to repay the balance amount and get back the cheques. In Ex.P3, the complainant instructed the respondents/accused to pay the balance amount and get back the cheques, otherwise action will be taken for cheating and cancellation of the document. For that, the respondents/accused instructed the complainant that they will pay the balance amount and get back the cheques. It is to be noted that the disputed cheques were not presented for collection till the notice was issued to the respondents/accused. Hence, it shows that both parties are of the intention not to present the cheques for collection. Further, the respondents/accused sent notice stating that the complainant had failed to perform his part of contract, so he stopped the payment. In this regard, the complainant denied the averments. But during his cross examination, he admitted that there were encumbrances in the sold property. Further it is seen from the records that after issuing notice to clear the encumbrance, on 15.07.2011, the disputed cheques were not presented for collection. Further, in the reply notice, it is stated by the complainant to pay the entire amount and get back the cheques. Further, it was stated on the complainant side that the respondents/accused put the date in the disputed cheques only on 05.01.2012. But the complainant presented the cheques for collection on the same day itself. Hence, it creates doubt, how the cheques handed over on 05.01.2012 were presented on the same day itself for collection.

13.Further in this case, the complainant is not the real owner. The complainant is only a Power Agent and he executed the sale deed in favour of the respondents/accused in the capacity as Power Agent. From the evidence of the complainant, it reveals that there was encumbrance in the suit property. Further, the complainant during his cross examination admitted that some civil cases are pending in respect of the suit property. Now it is to be noted that the complainant is not the party to the above proceedings. Further, it was already decided that no document was filed on the side of the complainant to prove that he paid the entire amount to the principal. Further it is seen that the complainant has not stated in his complaint that who is the real owner and who received the final sale consideration.

14.It is seen from the records that already sale deed was executed by the complainant in favour of the respondents/accused. If any failure on the part of the buyer, the seller has every right to cancel it. But in this case, the complainant has not taken any steps to cancel the sale deed already executed by him. Hence, this court is of the view that the remedy open to the complainant is to approach the civil forum.

15.It is pertinent to note that already the sale deed was executed by the complainant in favour of the respondents/accused and



the complainant stated that the value of the property is one crore. But however the sale deed was executed for Rs.9,00,000/-. Hence, the value of the property was undervalued in order to cheat the Government.

16.Further, the learned counsel appearing for the respondents/accused submitted that when there was sale agreement between the parties and when any cheque was given towards balance sale consideration, the balance sale consideration is not an enforceable debt and it amounts to other liability and for that, complaint under section 138 of the Negotiable Instruments Act is not maintainable. For that, the learned counsel appearing for the accused submitted a ruling reported in **2010 Cr1LJ 1061 (Karnt) (Venkatesh Bhat Vs. Rohidas Shenoy)**.

17.In this case, the complainant stated that the disputed cheques were given for balance sale consideration. Hence, the liability is not an enforceable liability and it amounts to other liability and it does not come under the purview of section 138 of the Negotiable Instruments Act. Further, in this case, the signatures in the cheques were admitted by the respondents/accused. Hence, the onus shifts to respondents/accused to rebut the presumption. In this case, already it was decided that there was no enforceable debt and other liability only arose between the parties and hence, the other liability does not come within the purview of section 138 of the Negotiable Instruments Act.

18.For all the reasons stated above, this court is of the considered view that the trial court has correctly passed the impugned orders, which does not call for any interference by this court.

19.Accordingly, both the Criminal Appeals fail and they are dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/ litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To,

1.The Judicial Magistrate,
Paramakudi.

2.Do Through The Chief Judicial Magistrate,
Ramanathapuram District.

COPY TO:-

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+2 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-24615 & 24616[F]
dated 30/07/2021)

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