



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2021

Pronounced on : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A. (MD)No.402 of 2016

R.Srinivasan

... Appellant/ Appellant/ Complainant

Vs.

Palanimuthu

... Respondent/ Respondent/ Accused

Prayer:- This Criminal Appeal is filed under Section 378 of Criminal Procedure Code to grant leave for the appellant to file this appeal, call for the records relating to the order dated 31.10.2014 in Criminal Appeal No.22 of 2014 passed by the learned I Additional District Judge (PCR), Tiruchirappalli, set aside the same and allowing the above Criminal Appeal arising out of the above Criminal Appeal filed against the order of conviction passed by the learned Judicial Magistrate No.VI, Tiruchirappalli in C.C.No.514 of 2006, dated 10.02.2013.

For Appellant : Mr.S.K.Mani

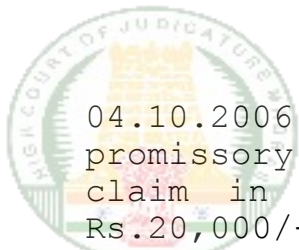
For Respondent : Mr.K.K.Senthil

JUDGMENT

This Criminal Appeal is filed to set aside the conviction and sentence imposed by the learned I Additional District Judge (PCR), Tiruchirappalli in Criminal Appeal No.22 of 2014, dated 31.10.2014.

2.The brief facts which are necessary for the disposal of this criminal appeal are as follows:

2.1.The appellant is the complainant before the learned Judicial Magistrate No.VI, Tiruchirappalli. As per the complaint, the accused before the learned Judicial Magistrate No.VI, is alleged to have obtained loan of Rs.3,00,000/- from the complainant on 12.03.2006 for which he had issued a cheque on 04.09.2006. When the same was presented by the complainant on the same day, it was returned for insufficient funds on 05.09.2006. Therefore, he had sent statutory notice on 13.09.2006 calling upon the accused to settle the dues within fifteen days, failing which, he will be forced to take legal action through Court of law. The accused received the notice on 16.09.2006 and he had issued reply on



04.10.2006 whereby he claimed that he had not executed any promissory note or cheque in favour of the complainant. As per his claim in the reply notice, he had already borrowed a sum of Rs.20,000/- from one Chidambaram for which he had issued a blank check duly signed towards repayment of the same. He had repaid the same to the said Chidambaram and sought return of the promissory note as well as the blank cheque. The said Chidambaram did not return the cheque or the blank promissory note stating that they were missing and he will trace it out and return the same. The said Chidambaram died. The complainant herein, a relative of Chaidambaram, who had placed his hands on the blank cheque and promissory note under the custody of the said Chidambaram and this complainant is not an acquaintance to the accused. He is a stranger. Therefore, the accused is not liable to pay any amount as demanded in the statutory notice.

2.2.In spite of the reply given by the accused, the complainant had lodged a complaint under Section 200 Cr.P.C. before the Court of the learned Judicial Magistrate No.VI, Tiruchirappalli. After recording the sworn statement of the complainant, the learned Judicial Magistrate No.VI had taken cognizance of the private complaint under Section 138 of Negotiable Instruments Act and he had issued summons to the accused. On appearance of the accused, copies of the complaint were furnished along with copies of the records viz., Cheque, Promissory Note and Notice. The accused pleaded not guilty and claimed to be tried. Therefore, the learned Judicial Magistrate No.VI, Tiruchirappalli had ordered trial. In the trial, the complainant himself examined as P.W.1 and the documents in support of the complaint were marked as Ex.P1 to Ex.P7. No other witnesses were examined on the side of the complainant.

Ex.P1 is the original promissory note executed by the accused in favour of the complainant dated 12.03.2006.

Ex.P2 is the cheque bearing No.0855534 drawn in favour of the complainant on State Bank of India, Kailasapuram Branch for Rs.3,00,000/-.

Ex.P3 is the cheque deposit chalan dated 04.09.2006.

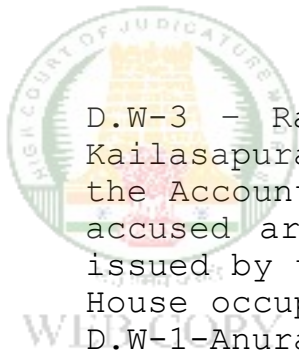
Ex.P4 is the memo issued from the State Bank of India, Kailasapuram Branch dated 05.09.2006.

Ex.P5 is the statutory notice sent to the accused dated 13.09.2006.

Ex.P6 is the acknowledgment card for the receipt of statutory notice under Ex.P5 dated 16.09.2006.

Ex.P7 is the reply notice sent by the accused dated 04.10.2006.

2.3.After the evidence of complainant was completed, the incriminating evidence was put to the accused under Section 313 of Cr.P.C. The accused denied the incriminating evidence against him. After 313 proceedings, the accused examined the witnesses and marked documents to disprove the claim of the complainant. D.W-1 Anurag Mishra is a staff of the Guest House of BHEL, Ranipet District. <https://hdc.wes2.courts.go.in/jcservices/> Arun is the Officer of the Punjab National Bank.



D.W-3 - Rajarathinam is the Manager of the State Bank of India, Kailasapuram Branch, Tiruchirappalli. D.W-4 - Joseph Vincent Raj is the Accounts Officer, BHEL. The documents marked on the side of the accused are Ex.D1 - Police Complaint dated 06.10.2006 and receipt issued by the Thiruverumbur Police. Ex.D2 is the BHEL Ranipet Guest House occupancy register. Ex.D3 is the copy of the Identity Card of D.W-1-Anurag Mishra. Ex.D4 is the true copy of bank statement of complainant given by the Manager of Punjab National Bank, Industrial Area Branch, Trichy. Ex.D5 is the application for advance T.A./Daily allowance. Ex.D6 is the receipt bill for payment of money. Ex.D7 is the claim form given by the accused. Ex.D8 is the copy of the stop payment instructions given by the accused to State Bank of India. Ex.D9 is the true copy of the Bank statement of the accused issued by the State Bank of India, Kailasapuram Branch.

2.4.On appreciation of evidence by the learned Judicial Magistrate No.VI, Tiruchirappalli, the accused was found guilty for having committed offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo six months simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.

2.5.On appeal by the accused in C.A.No.22 of 2014, after hearing the arguments of the appellant and the respondent/complainant, the learned First Additional District Judge (PCR), Tiruchirappalli, had reversed the findings of the learned trial Judge convicted the accused and thereby acquitted the accused. Aggrieved by the judgment of acquittal recorded against the accused in C.A.No.22 of 2014, the complainant before the Court of learned Judicial Magistrate No.VI, Tiruchirappalli, had preferred this Appeal.

2.6.Since the Full Bench of this Court by judgment in the case of **K.Rajalingam -vs- R.Suganthalakshmi** reported in **(2020) 4 CTC 1** issued direction to the Registry that in cases arising out of 138 Negotiable Instruments Act, when the appellate Court acquits the accused and the complainant prefers appeal, it should be taken as appeal and not as revision. Therefore, this case is also taken as criminal appeal.

2.7.The appellant herein is the complainant before the Court of the learned Judicial Magistrate No.VI, Tiruchirappalli. The learned Judicial Magistrate No.VI, after appreciating the evidence and arguments on both side, convicted the accused, sentencing him to undergo simple imprisonment for a period of 6 months for the offence under Section 138 of Negotiable Instruments Act and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month.

2.8.Aggrieved by the said order, the accused had preferred an



appeal in C.A.No.22 of 2014 before the Court of the learned I Additional District Judge (PCR), Tiruchirapalli. On hearing the arguments of both side and on perusal of the evidence, the learned appellate Judge set aside the order of the learned trial Judge and dismissed the complaint, thereby releasing the accused from his culpability. Aggrieved against the judgment of acquittal passed by the learned appellate Judge, the complainant had preferred this Criminal Appeal.

3.It is the contention of the learned counsel for the appellant that the appellant herein is the complainant before the Court of the learned Judicial Magistrate No.VI, Tiruchirapalli. The appellant herein had filed this case based on the reasoning given by the Full Bench of this Court by judgment in the case of **K.Rajalingam -vs- R.Suganthalakshmi** reported in **(2020) 4 CTC 1**, directing the Registry to number this case as Criminal Appeal as it is against the judgment of acquittal against the accused.

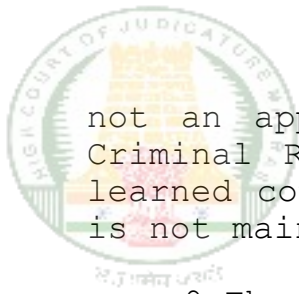
4.Aggrieved by the appellate Court in not exercising the jurisdiction, the complainant had preferred further appeal to this Court. On wrong appreciation of evidence, the learned appellate Judge had acquitted the accused. Therefore, the appeal only lies before this Court, as per the contention of the learned counsel for the appellant/complainant.

5.After statutory notice was issued by the complainant, the accused had received a copy of the advocate notice sent by the complainant and repudiated the claim of the complainant.

6.The learned counsel for the appellant/complainant had submitted that the trial Magistrate had properly appreciated the evidence, whereas, the learned I Additional District Judge (PCR), Tiruchirapalli had not properly appreciated the evidence. He had come to the opposite view contrary to the view expressed by the learned trial Judge i.e., in spite of the presumption available in favour of the complainant, the accused had denied the claim of the complainant in the appeal, the learned I Additional District Judge (PCR), Tiruchirapalli had acquitted the appellant/accused and set aside the order of conviction recorded by the learned trial Judge.

7.Aggrieved by the judgment of acquittal recorded by the learned I Additional District Judge (PCR), Tiruchirapalli, the present appeal had been filed.

8.The contention of the learned counsel for the respondent/accused that this appeal is to be treated as Second Appeal and there is no provision for the Second Appeal. If either the accused or the appellant had suffered in the hands of the appellate authority, the petition filed by the complainant before this Court has to necessarily be filed only as a revision case and



not an appeal. Therefore, the complainant ought to have filed a Criminal Revision Case and not a Criminal Appeal. Therefore, the learned counsel for the respondent/accused submits that this appeal is not maintainable.

9.The learned counsel for the appellant/complainant had stated that he had filed originally a Criminal Revision Case. The Staff members of the Registry directed the counsel for the appellant to file an appeal and not a revision, since this case is arising out of the acquittal of the accused in the appeal. In such cases, appeal will lie only before this Court and not a revision.

10.It is the case of the appellant/complainant that he had lent a sum of Rs.3,00,000/- as loan to the respondent/accused. The accused had declined the same stating that he had borrowed a sum of Rs.20,000/- from one Chidambaram, for which, he had executed a promissory note. He had settled the dues for a sum of Rs.20,000/- to the said Chidambaram. At that time, he had sought the said promissory note and cheque leafs, for which, the said Chidambaram stated that records were overlapped. Therefore, he needs time to sort out the records.

11.As per the reply sent by the respondent/ accused, the promissory note alleged to have been executed by the respondent/accused was lost before the alleged issuance, as stated by the appellant/complainant and the appellant/complainant had filled it up as though the accused is owing Rs.3,00,000/. Further, for missing the cheque, the appellant had already preferred a police complaint. After the death of the said Chidambaram, the cheque, which is in the custody of Chidambaram was filled up on his own by the complainant. The respondent/accused is not aware of this complaint and he is a total stranger. Therefore, the complaint preferred by the complainant is to be set aside and the order of acquittal is to be recorded.

12.Regarding alibi, the ruling of the Hon'ble Supreme Court in ***State of Uttar Pradesh -vs- Sheo Sanehi and others*** reported in ***(2004) 12 SCC 347***, the plea of alibi in the reported case was rejected by the Sessions Judge and the accused was convicted. In the appeal, the Hon'ble High Court accepted the plea of alibi and acquitted the accused against which the State of Uttar Pradesh went in further appeal to the Hon'ble Supreme Court where the Hon'ble Supreme Court restored the conviction and rejected the plea of alibi. In the reported decision, the plea of alibi by the accused was that he was in jail during the alleged occurrence and he had produced witnesses as proof of the plea of alibi, the jail officials as defence witness as to the proof of alibi regarding the claim that he was in jail. In the cross-examination, D.W-10 admitted that the person by name Sheo Sanehi who was arrested by D.W.9 and brought to prison by D.W.10 was not bold-headed whereas the accused in the



reported case Sheo Sanahi was bald-headed. Therefore, the plea of alibi was rejected by the learned Sessions Judge whereas the Hon'ble High Court accepted the plea of alibi which was considered by the Hon'ble Supreme Court as perversity and the conviction of the accused was restored.

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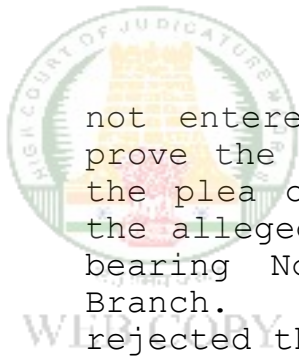
13. In **Seema Satiya -vs- Vinay Kumar** [<https://indiankanoon.org/doc/89208486>] case, the accused took the plea of alibi which was rejected by the learned trial Judge on the ground that it was an after-thought and blatant lie. The plea of alibi was not put in cross-examination to the complainant witnesses. Only at the stage of defence witness, the accused had let in evidence and plea of alibi as evidence. Also during examination of the accused under 313 Cr.P.C., he did not claim alibi and only at the stage of defence witness he had claimed alibi. Therefore, the learned Trial Judge had rejected the plea of alibi. The Court had relied on the rulings of the Hon'ble Delhi High Court in **Lakhan Singh @ Pappu vs The State of National Capital Territory of Delhi** in which it was laid down the plea of alibi cannot be equated with the plea of self-defence and ought to be taken at the first instance and not belatedly at the stage of defence by evidence.

14. In **Lakhan Singh @ Pappu's** case also the plea of alibi was rejected on the ground that he had not taken such a plea at the earliest stage and only as an after-thought at the stage of defence evidence, the plea of alibi was taken.

15. As per the above rulings, the judgment of the learned Judicial Magistrate No.VI, Tiruchirappalli in C.C. No.514 of 2006 had rightly rejected the plea of alibi by the accused and had convicted the accused and sentenced him as per the provisions of Section 138 of Negotiable Instruments Act.

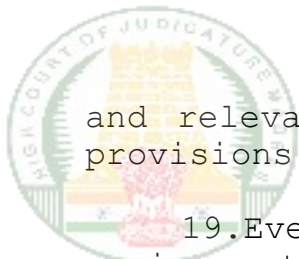
16. In the appeal, the learned First Additional District Judge (PCR), Tiruchirappalli in C.A.No.22 of 2014 had reversed the findings recorded by the learned Judicial Magistrate No.VI, Tiruchirappalli, convicting the accused and set aside the conviction of the accused, accepting the plea of alibi created by the accused.

17. By the rulings relied on above by this Court, the alibi as a defence taken in the case by the accused before the learned Judicial Magistrate No.VI, Tiruchirappalli is an after-thought. He had not pleaded alibi either in the reply notice to the statutory notice issued or in the cross-examination of the complainant. Whereas to prove the prior liability, the complainant had marked the promissory note executed by the accused as a document Ex.P1. The learned Judicial Magistrate No.VI, Tiruchirappalli, had in the judgment stated that after receipt of statutory notice only the accused had preferred police complaint stating that cheques are missing. Therefore, it is an after thought. Added to that, the accused had



not entered the witness box to deny the entire complaint and to prove the defence. Whereas he had set up D.W.1 to D.W.4 regarding the plea of alibi that he was not available at Tiruchirappalli at the alleged date on which he is alleged to have issued Ex.P2-cheque bearing No.0855534 drawn on State Bank of India, Kailasapuram Branch. Therefore, the learned Judicial Magistrate No.VI had rejected the plea of alibi and the evidence adduced on behalf of the accused through D.W.2 to D.W.4. D.W.2-Rajasekaran was an officer of the Punjab National Bank where the accused had his account. He had in his cross-examination stated that he was adducing evidence based on records and he was not serving at the branch at the relevant point of time when the accused is alleged to have informed the bank not to honour the cheques. Therefore, the learned Judicial Magistrate No.VI had rejected the evidence of D.W.1 to D.W.4 on the ground that the accused had set up a plea of alibi as an after-thought and also the plea of cheques lost also without prior details viz., where it was lost and when it was lost. Those details are not available before the Court. To give clarity to the claim of the accused, the accused himself ought to have let in evidence but he had not entered witness box. Therefore, the learned Judicial Magistrate, on appreciation of evidence on the side of the complainant under Ex.P1 to Ex.P7 and the presumption available to the complainant under Sections 118 and 139 of Negotiable Instruments Act, and on proper appreciation of evidence, had arrived at a logical conclusion that the complainant had proved his case through proper evidence and thereby convicted the accused and sentenced him to undergo 6 months simple imprisonment and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.

18.In the appeal, the First Additional District Judge (PCR), Tiruchirappalli, misdirected herself by relying upon the decision in the case of **Hiten P. Dalal vs Bratindranath Banerjee** reported in **2001 (6) SCC 16** placed on behalf of the appellant/accused for the proposition that the accused need not enter the witness box. To discharge the burden of proof and rely on the evidence on behalf of the accused deposed by D.W.1 to D.W.4 thereby ignoring the presumptions that are available in favour of the complainant under Sections 118, 139 and 138 of Negotiable Instruments Act, he placed on another decision in the case of **S.Gopal vs D.Balachandran** reported in **(2008) 1 CTC 491**. Also the Court can draw adverse inference if the accused does not discharge the burden of proof in cases of this nature. The learned trial Judge had already considered the plea of alibi and the fact that the missing of the cheques pleaded by the accused and rejected the same in the light of the provisions of Sections 138, 139 and 118 of the Negotiable Instruments Act. The learned First Additional District Judge, PCR, Tiruchirappalli had ignored the guidelines issued by the Hon'ble Supreme Court regarding finding of the learned trial Judge shall not be disturbed if it is found to be on proper appreciation of evidence



and relevant materials before the learned trial Judge as per the provisions of the Indian Evidence Act.

19. Even on the same set of evidence, if the appellate Court arrives at a just opposite view, the view of the appellate Court shall not be thrust upon the learned trial Judge because the trial Judge had the benefit of watching the demeanour of the witnesses as well as the accused and therefore, weightage shall be given to the findings of the learned trial Judge. This principle was ignored by the learned Appellate Judge/First Additional District Judge (PCR), Tiruchirappalli in reversing the finding of guilt recorded against the accused. Therefore, the finding of the learned First Additional District Judge on the ground of alibi acquitting the accused is found perverse as per the reported ruling of the Hon'ble Supreme Court in **Seema Satiya -vs- Vinay Kumar** [<https://indiankanoon.org/doc/89208486>]. Therefore, this Court restores the judgment of the learned Judicial Magistrate No.VI, Tiruchirappalli and set aside the judgment of the learned First Additional District Judge (PCR), Tiruchirappalli in C.A.No.22 of 2004.

20. In the light of the above discussion, the point for consideration is answered in favour of the complainant and against the accused/respondent.

In the result, appeal is allowed. The accused is sentenced to undergo six months simple imprisonment and to pay compensation of Rs.3,00,000/- (Rupees Three Lakhs only) to the appellant. The learned Judicial Magistrate had imposed only Rs.5,000/-. It is reiterated by the Hon'ble Supreme Court that in cases involving cheque, the amount to be imposed on the accused shall be strictly as per the provisions of Section 138 of Negotiable Instruments Act. Instead the learned Judicial Magistrate had only imposed a fine of Rs.5,000/-, which defeats the parliamentary intent in amending Section 138 of the Negotiable Instruments Act which is found unreasonable. Therefore, the learned Judicial Magistrate No.VI, Tiruchirappalli, is directed to issue warrant against the accused to undergo the remaining period of imprisonment and to impose compensation under Section 357 of Cr.P.C. as to the amount described in the cheque under Ex.P2 viz., Rs.3,00,000/- (Rupees Three Lakhs only).

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

ias/SRM

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



TO:

- 1.The I Additional District Judge (PCR),
Tiruchirappalli.
- 2.The Judicial Magistrate No.VI,
Tiruchirappalli.
- 3.-do- Through the Chief Judicial Magistrate,
Tiruchirappalli.

Copy to:-

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-28153[F] dated
03/09/2021)

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RD(28.09.2021) 9P 7C