



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

COMMON ORDER RESERVED : 01.07.2021

COMMON ORDER PRONOUNCED : 30.07.2021

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CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**
Crl.R.C. (MD) Nos.233 and 234 of 2017

P.Arumugam ... Petitioner in Both Crl.R.C.s,

vs.

T.R.Premchander ... Respondent in both Crl.R.Cs.,

COMMON PRAYER:- These Criminal Revision Cases filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment in C.A.Nos.55 and 56 of 2015 on the file of the learned 4th Additional District and Sessions Judge, Madurai dated 16.11.2016 in S.T.C.Nos.1687 and 1688 of 2013 on the file of the learned Judicial Magistrate, Court No.II, (Fast Track Court at Magisterial Level), Madurai and set aside the same.

For Petitioner
in both Crl.R.Cs., : Mr.T.Lajapathi Roy

For Respondent
in both Crl.R.Cs., : Mr.S.Kiruba Vijay Anand

COMMON ORDER

These Criminal Revision Petitions had been filed to call for the records pertaining to the judgments in C.A.Nos.55 and 56 of 2015 on the file of the learned 4th Additional District and Sessions Judge, Madurai dated 16.11.2016 in reversing the judgment and conviction in S.T.C.Nos.1687 and 1688 of 2013 on the file of the learned Judicial Magistrate Court No.II, (Fast Track Court at Magisterial Level), Madurai and set aside the same.

2.Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner submits that the petitioner herein is the complainant before the Court of the learned Judicial Magistrate Court No.II, (Fast Track Court at Magisterial Level), Madurai and it is a case under Section 138 of Negotiable Instruments Act, 1881.

3.It is the case of the petitioner/complainant that a case in S.T.C.Nos.1687 and 1688 of 2013, after due trial, ended in conviction as against the respondent herein/accused, whereby, the respondent was convicted and sentenced to undergo simple



imprisonment for a period of one year and 8 months and to pay the total cheque amount of Rs.2,20,000/- as compensation to the petitioner.

4.As against the order of conviction, the respondent herein had preferred an appeal in C.A.Nos.55 and 56 of 2015 on the file of the 4th Additional District and Sessions Judge, Madurai and after hearing the arguments advanced by the learned counsel for the appellant/accused and the learned counsel for the respondent/complainant, the learned 4th Additional District and Sessions Judge, Madurai acquitted the accused/respondent herein on the ground that the cheques were not issued to discharge a legally enforceable debt and it is for consideration, which is barred by the Indian Contract Act, 1872.

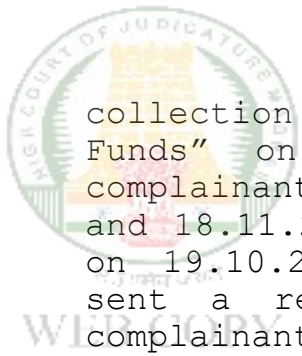
5.Now the petitioner/complainant had suffered from miscarriage of justice before the Court of the learned 4th Additional District and Sessions Judge, Madurai and aggrieved by the same, he had preferred these Criminal Revision Cases.

6.It is the contention of Mr.T.Lajapathi Roy, learned counsel for the petitioner that the cheques were actually issued by the respondent to discharge a legally enforceable debt. The learned counsel relies on the ruling of the Hon'ble Supreme Court in the case of **Rangappa Vs. S.Mohan** reported in **(2010) 11 SCC 441** and would submit that the judgment of the learned 4th Additional District and Sessions Judge, Madurai is against the said reported judgment. Therefore, Mr.T.Lajapathi Roy, learned counsel for the petitioner seeks indulgence of this Court to set aside the judgment passed by the learned 4th Additional District and Sessions Judge, Madurai and to restore the conviction and order of sentence passed by the learned Judicial Magistrate Court No.II, (Fast Track Court at Magisterial Level), Madurai.

7.Mr.S.Kiruba Vijay Anand, learned counsel for the respondent filed his written arguments.

8.As per the submission of Mr.S.Kiruba Vijay Anand, learned counsel for the respondent, the case of the petitioner/complainant is that the accused obtained a sum of Rs.5,25,000/- from the complainant by promising to get a Government Job for the son of the complainant. Instead of getting a Government Job, the accused had spent the money for his family expenses and had developed his water business in the name of JP Enterprises.

9.After repeated request, the accused paid a part sum of Rs.2,80,000/- on various dates. Further, by deducting Rs.25,000/- towards the expenses incurred in his attempt to get a Government Job, for the remaining amount, the accused had issued three cheques bearing Nos.545924, 545929 and 545930 dated 12.08.2013 and 14.08.2013 respectively for a total sum of Rs.2,20,000/- for



collection and the same was dishonored for the reason "Insufficient Funds" on 10.10.2013 and 12.11.2013 respectively. Hence, the complainant issued a statutory legal demand notice dated 18.10.2013 and 18.11.2013 and the same was received by the respondent/accused on 19.10.2013 and 19.11.2013. Thereafter, the respondent/accused sent a reply noticed dated 12.11.2013 and 20.11.2013 to the complainant.

10. In reply to the notice, the accused had admitted the fact that he had received a sum of Rs.5,25,000/- from the complainant, but had denied the averments that the amount was borrowed for the purpose of securing a job for the son of the complainant. He had stated that a sum of Rs.4,50,000/- had been returned to the complainant after getting back the cheque No.727049, for a sum of Rs.4,50,000/- belonging to his brother-in-law and cheque Nos.588686 and 588687, each for a sum of Rs.1,00,000/- was returned by the complainant after receiving the amount and in total the complainant had received a sum of Rs.6,50,000/- instead of 5,25,000/-. Now, with aid of the remaining cheques, the complainant had filed the complaint to harass the accused.

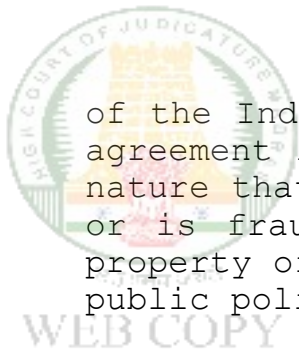
11. After trial in S.T.C.Nos.1687 and 1688 of 2013, the learned Judicial Magistrate had given a finding that the presumption under Section 139 of the Negotiable Instrument Act had not been rebutted by the accused. Therefore, the learned Judicial Magistrate had arrived at a finding that the accused is found guilty and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,20,000/- as compensation. Aggrieved by the same, the accused had preferred an appeal in C.A.Nos.55 and 56 of 2015 before the learned 4th Additional District and Sessions Judge, Madurai.

12. After hearing the appeals, the learned 4th Additional District and Sessions Judge, Madurai, allowed the appeals and set aside the order of the learned Judicial Magistrate Court No.II, (Fast Track Court at Magisterial Level), Madurai in S.T.C.Nos.1687 and 1688 of 2013. Against the order of acquittal, the complainant had preferred these Revision Cases.

The point for consideration in these Revision Cases is whether the debt is legally enforceable in a Court of law.

13. The complainant in the petition and in the legal notice had stated that he had paid a sum of Rs.5,25,000/- to the respondent/accused on 10.11.2010 for the purpose of getting a Government Job for his son (the same had been mentioned in the petitioner's typed set of papers at page No.1 in paragraph No.2). The petitioner/complainant gave the amount as illegal gratification.

14. Explanation in Section 138 of Negotiable Instrument Act makes it clear that the expression 'debt or liability' has reference only to a legally enforceable debt or liability. As per Section 23



of the Indian Contract Act, 1872, the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent; or involves or implies injury to the person or property of another or the Court regards it as immoral or opposed to public policy.

15.Illustration (f)

A promise to obtain for B an employment in the public service and B promises to pay Rs.1,000/- to A. The agreement is void as the consideration for it is unlawful. As per Section 65 of the Indian Contract Act, 1872, when a agreement is discovered to be void or when a contract become void, any person who had received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person, from whom he received it.

16.The expressions 'agreement' and 'contract' have distinct meanings under the Contract Act. As mentioned earlier, an 'agreement' becomes void appearing in the said Section 85 would not have any application in the case, where an agreement is void *ab initio*. It has already been indicated above that the agreement in the present case was void from the very beginning.

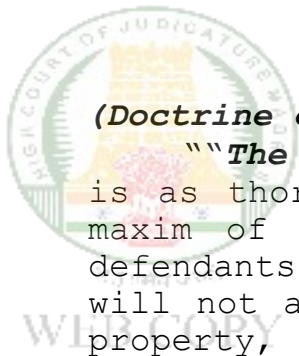
17.From the above, it is found that the agreement in question as also the agreement of the type mentioned in Illustration (f) to the said Section 23 cannot fall within the phrase 'a contract becomes void'. This has reference to those agreements which the contracting parties or one of them did not know at the time of entering into the agreement, that the same was not enforceable in law but it was later discover by them or one them as being void.

18.Where the parties are aware and have knowledge that the agreement is unlawful and despite this knowledge they go ahead with the agreement, they would not be able to take recourse to the provisions of the said Section 65 because there would be no discovery of the invalidity of the agreement that the agreement was unlawful and therefore, void was known to them all along.

19.Mr.S.Kiruba Vijay Anand, learned counsel for the respondent/accused cited the following judgments:

- i) **Md.Faizal Khan @ Faizal Khan Vs. State of Jharkhand and another** reported in 2007 Crl LJ 2262:((2012) (3) JCR 15 (JCR))
- ii) **R.Parimal Bai Vs. Bhaskar Narasimhaiah** (Crl.O.P.No.1387/2011-D.D.-06.07.2018)
- iii) **Jeyaramachandra Vs. Babu** (Crl.A.Nos.534 and 535 of 2013 on 20.03.2020)-Madras High Court.

20.The learned counsel for the respondent/accused relied on the Book in **Herbert Broom's "A Selection of Legal Maxims (10th Edition)**
<https://hcservices.ecourts.gov.in/hcservices/>



(Doctrine or Rule of Pari Delicto) the maxim expalined as follows:-"

"The maxim in pari delicto portior est condition possidentis" is as thoroughly settled as any proposition of law can be. It is maxim of law established, not for the benefit of plaintiffs or defendants, but is founded on the principles of public policy, which will not assist a plaintiff who has paid over money or handed over property, in pursuance of an illegal or immoral contract, to recovery it back; for the Courts will not assist an illegal transaction an any respect".

21.The learned counsel for the respondent/accused also relied on the following rulings:-

- i) AIR 1979 Madras 42 (N.V.P.Pandian and M.M.Roy)
- ii) AIR 1968 SC 534 (Sitaram Vs. Radhabai-Three Judges Bench)
- iii) 2004 (12) SCC 83

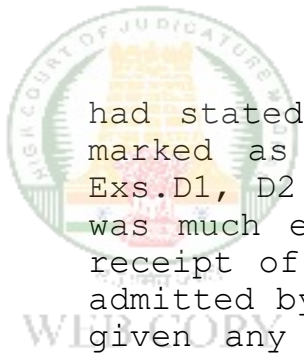
22.No Court can come to the aid of the party in an illegal transaction. It is settled law that in such cases, the loss must be allowed to lie where it falls. In this case, as these are unaccounted transactions, the Court could not have lent its hands and passed a decree.

23.Whether the petitioner lodged a criminal complaint or prosecution? - The petitioner/complainant had not produced any document to show, he had lodged the criminal complaint for cheating against the respondent. If he has been cheated by the respondent, the petitioner would have lodged a police complaint against the respondent.

24.Respondents side documents, Ex.D1 to Ex.D3 - The petitioner gave the amount of Rs.5,25,000/- on 10.11.2010 to the respondent. The learned counsel for the accused submitted that the accused had marked Ex.D1 to Ex.D3, three cheques, bearing Nos.727049, 588686 and 588687 dated 15.08.2011, 05.06.2012 and 06.07.2012 for a sum of Rs.4,50,000/-, Rs.1,00,000/- and Rs.1,00,000/- respectively sating that those cheques were earlier given by the accused to the complainant and after all those cheque were dishonored, the accused repaid the total sum of Rs.6,50,000/- to the complainant and got back those cheques from him.

25.It is also pointed out that during cross-examination, the complainant had admitted the factum of dishonor of all those three cheques when presented by him but had denied the payment made by the accused subsequently while returning back those cheques pointing out that the complainant had not given any explanation as to how he had chosen to return back those three cheques to the accused without receiving the amount.

26.On perusal of the records, this Court finds that according to the complaint, the amount was received by the accused on 10.11.2010. On 26.01.2011, the demand notice and the complaint, the complainant



had stated only about the cheques dated 12.08.2013 and 07.10.2013 marked as Ex.P1 and Ex.P2 and not about the cheques marked as Exs.D1, D2 and D3 dated 15.08.2011, 05.06.2012 and 06.07.2012, which was much earlier in date to Exs.P1 and P2. At the same time, the receipt of Exs.D1 to D3 from the accused and its dishonor has been admitted by the complainant during cross-examination, but he had not given any explanation as to why he returned back those cheques, Exs.D1 to D3 to the accused without getting the debt discharged.

27.From the above circumstances, it could be easily inferred that the complainant could have received Exs.D1 to D3 from the accused at the earliest point of time and had returned back the same to the accused after receiving the alleged amount. The petitioner/complainant had not stated about the some other transaction between them after 10.11.2010 and under such circumstances it is for the petitioner/complainant to explain as to how he returned back Exs.D1 to D3 to the respondent without receiving the entire amount.

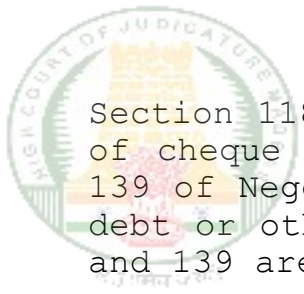
28.The petitioner/complainant inquired about the dishonor of Ex.D1 to the respondent/accused and the respondent/accused gave him some amount and issue two more cheques each for a sum of Rs.1,00,000/- and got back Ex.D1. What was that some amount given by the respondent towards discharge of partial debt is not known. The petitioner/complainant had not come to the Court with clean hand and failed to mention the entire transactions.

29.Whether the accused can let evidence or not?

30.The petitioner/complainant relied on the rulings of the Hon'ble Supreme Court in the case of **Hiten P.Data-2001 (6) SCC 16 and K.N.Bena Vs. Muniappan-2001** regarding the consequences of respondent have not let in evidence.

31.The Hon'ble Supreme Court in the case of Rangappa Vs. Sri Mohan (Three Judges) referred in paragraph No.14 had stated that it is a settled position, when an accused has to rebut the presumption under Section 139 of the Negotiable Instrument Act, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the petitioner can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

32.In the case of **K.Prakasan Vs. P.K.Surendran** reported in **2008 (1) SCC 258**, in paragraph No.12, which was relied on by the learned counsel for the respondent/accused, the Act raises two presumptions. Firstly, in regard to the passing of consideration as contained in



Section 118 (a) therein and secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 of Negotiable Instrument Act discharged in whole or in part any debt or other liability. The presumption both under Section 118 (a) and 139 are rebuttable in nature.

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33. Having regard to the definition of rems proved and disproved as contained in Section 3 of the Evidence Act as also the nature of the said burden upon the prosecution vis-vis an accused, it is not necessary that the accused must step into the witness box to discharge the burden of proof in terms of the aforementioned provision.

34. In the reported rulings of the Hon'ble Supreme Court in the cases of **M.S.Narayana Menon Vs. State of Kerala (2006 (6) SCC 39)** and **John K. John Vs. Tom Varghese and another (AIR 2008 SC 278)**, it had been stated that in any event the High Court can entertain the appeal treating to be an appeal against the acquittal; it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind that well settled principles of law that where two views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below.

35. In **Vijay Vs Alxman 2013 (3) SCC 86** and in the judgment reported in **AIR 2001 SC 2902**, it is stated that the accused cannot be compelled. By referring the aforementioned rulings, the learned counsel for the respondent/accused prayed for dismissal of there Revision Cases.

36. The point for consideration is whether the judgment passed by the learned trial Judge/the Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai in S.T.C.Nos.1687 and 1688 of 2013, convicting the accused and sentencing him to undergo simple imprisonment for a period of 8 months and to pay a fine of Rs.1 lakh is to be restored and the judgment of the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai in C.A.Nos.55 and 56 of 2015 is to be set aside.

37. On consideration of the rival contentions raised by the learned counsel on either side and on perusal of the judgment pronounced by the learned trial Judge/the Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai in S.T.C.Nos.1687 and 1688 of 2013 and the judgment in appeal by the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai in C.A.Nos.55 and 56 of 2015, the finding arrived at by the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai is found acceptable and reasonable in the proposition of law that a contract entered into between two parties, which is void *ab initio*, is well founded.



38.The fact that when a contract is unenforceable and as against the public policy of the State, then the party, who ever suffers because of the consequences of such contract, cannot enforce such contract through a Court of law is well founded and well reasoned in the judgment of the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai.

39.The notice sent by the petitioner/complainant states about the fact that for the purpose of getting a job for his son in Government service, he had paid a sum of Rs.5,25,000/- to the accused and the same is mentioned in the complaint. Therefore, the agreement itself is void *ab initio*. Securing a Government job for a sum of Rs.5,25,000/- paid to the accused amounts to inducing corrupt means.

40.If the Government Jobs are for the last grade servants like Peon, Office Assistant and other such categories of Government servants, the same is done through job interviews to be conducted by the respective departments based on the interview and etc, which is a lawful exercise done by the Government Servants. If the Government Job ranging from Junior Assistant scale, then it is conducted by the Tamilnadu Public Service Commission as recruitment for Typists, Clerks, Assistants, Junior Assistants and etc.

41.When those agencies are conducting the recruitment process transparently, the common man like, the petitioner/complainant herein had attempted to give money as bribe to some other Government Officials through illegal means, which cannot be enforced in any Court of law. If what had been stated in the complaint is to be believed, the complaint itself ought not to have been numbered before the Court of the learned Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai, where the sworn statement of the complainant was recorded at the earliest point of time.

42.The then learned Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai, who had presided over the Court at the time of entertaining the complaint should have dismissed it at the threshold. Even after the sworn statement was recorded and learned Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai had taken the complaint on the file at the time of trial, the learned Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai ought to have dismissed the complaint.

43.Any transaction between to parties, who had entered into an agreement of contract, which is void *ab initio* and cannot be enforced due to the public policy of the State. Encouraging corruption is against the public police. Even though there are some reasons for the Government Officials regarding recruitment,



to vacancies that raise in the Government Offices, there are Vigilance enquiry, but that cannot be a ground to enforce such illegal activities through a Court of law.

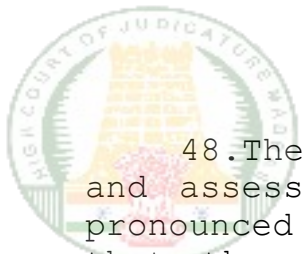
44.The complaint itself specifically mentioned that for securing a Government Job, the petitioner/complainant had given a sum of Rs.5,25,000/- to the accused, but the accused had misappropriated the same and developed his water business and therefore, the finding of the learned trial Judge/the Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai was against the public policy of the State. The learned trial Judge/ the Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai had ignored the principles of law, but the same had been set right by the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai in the judgment in C.A.Nos.55 and 56 of 2015.

45.In view of the above discussions, if the arguments made by the learned counsel for the petitioner/complainant to set aside the judgment of acquittal recorded by the learned 4th Additional District and Sessions Judge, Madurai is set aside, it will amount to perverse judgment by this Court against the well reasoned judgment of the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai, who had considered the pleadings in the complaint as well as the defence of the accused.

46.By filing the private complaint in S.T.C.Nos.1687 and 1688 of 2013, the petitioner/complainant had attempted to recover the money paid to the accused as bribe for getting a Government Job for his son. This contract between the petitioner/complainant and the respondent/accused cannot be enforced and he has no relief before the Court of law.

47.If the complainant had filed a complaint before the police against the respondent as accused, it would have resulted in registering a case for false promise, but not before the Court either by filing a suit for recovery of money or by filing a private complaint under Section 138 of Negotiable Instrument Act. Therefore, on perusal of the judgment passed by the learned trial Judge/ the Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai in S.T.C.Nos.1687 and 1688 of 2013 and the judgment of the learned appellate Judge/the 4th Additional District and Sessions Judge, Madurai in C.A.Nos.55 and 56 of 2015, the finding arrived at by the learned appellate Judge/ the 4th Additional District and Sessions Judge, Madurai holding that the case borne out of a contrat, which is void *ab initio* cannot be enforceable and therefore, the complaint and the evidence of the complaint is to be rejected and the accused is to be acquitted is well reasoned judgment and that cannot be set right as the appellate Judge had discretion to analyze and assess the evidence, which was available

<https://hccs.courts.gov.in/tcr/via/> before the trial Court.



48.The appellate Court exercising its discretion in analyzing and assessing the entire evidence of the trial Court itself had pronounced the judgment. From the available materials, it is found that the finding of conviction arrived at by the learned trial Judge/the Judicial Magistrate, Court No.II, (Fast Track Court at Magistrate Level), Madurai is perverse, which cannot be restored by this Court.

49.In the light of the above discussions, the point for consideration is answered against the petitioner/complaint and in favour of the respondent/accused.

50.In the result, these Criminal Revision Cases are dismissed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

To

- 1.The 4th Additional District and Sessions Judge,
Madurai.
- 2.The Judicial Magistrate-II,
Fast Track Court (Magisterial Level),
Madurai.
3. The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

common order made in
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30.07.2021

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