



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.04.2021
Pronounced on : 03.09.2021

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THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C. (MD) No.281 of 2017

U.N.Duraipadmanaban ... Petitioner/Appellant/Complainant

Vs.

M.Chandrasekar ... Respondent/Respondent/Accused

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records relating to order dated 27.02.2017 passed in C.A.No.31 of 2015 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur by confirming the order dated 22.04.2015 passed in S.T.C.No.515 of 2013 on the file of the Judicial Magistrate (FTC), Thanjavur and set aside the same.

For Petitioner : Mr.G.Karnan
For Respondent : No appearance

ORDER

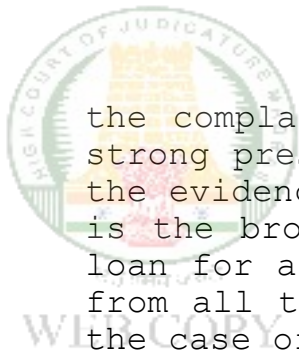
This Criminal Revision Case had been prepared against the judgment dated 27.02.2017 passed in C.A.No.31 of 2015 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur by confirming the judgment dated 22.04.2015 passed in S.T.C.No.515 of 2013 on the file of the learned Judicial Magistrate (FTC), Thanjavur.

2.The learned counsel appearing for the Revision Petitioner submitted that the Revision Petitioner herein is the Complainant before the Trial Court. The Complainant examined himself before the Trial Court as P.W-1 and one Kesavan was examined as P.W-2 and the documents in support of the Complainant were marked as Ex.P1 to Ex.P8. On the side of the respondent, sister of the accused was examined as D.W-1 and no document was marked on his side.

3.The learned counsel for the Revision Petitioner/Complainant had invited the attention of this Court to the typed set of papers by referring to paragraph Nos.15 and 16 of the judgment of the Trial Court wherein, the learned Judicial Magistrate (Fast Track Court), Thanjavur, had discussed the evidence in favour of the Complainant.

submitted

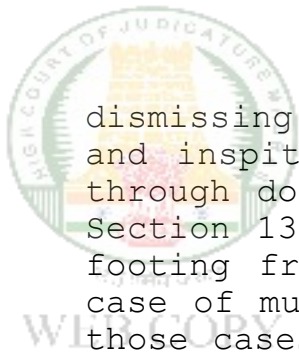
8. The learned counsel for the Revision Petitioner/Complainant invited the attention of this Court to the evidence of the Complainant -P.W-1 and documentary evidence under Ex.P1 to Ex.P8. The accused did not enter the witness box. Instead, one Chandra, who is stated to be the sister of the accused, had deposed evidence. No documents have been filed on the side of the accused to disprove the claim of the Revision Petitioner/Complainant. Apart from all these things, the statutory notice issued by the Complainant to the accused was received by the accused but he did not send any reply. Therefore, the presumption available to the Court under Section 142 of the Indian Evidence Act and Section 112 of the Negotiable Instruments Act are in favour of the Revision Petitioner/Complainant. While so, based on the defence of the learned counsel for the accused, the learned Judicial Magistrate (First Class) Thanjavur had misdirected herself and dismissed



the complaint in spite of the proof available before the Court and strong presumptions that are available to the Court in the light of the evidence under P.W-1 and P.W-2 and Ex-P-1 to Ex-P-8. P.W.2, who is the brother of the Complainant was examined regarding lending a loan for a sum of Rs.3,00,000/- by P.W.2 in favour of P.W.1. Apart from all these things, the cross examination of D.W.1 also supports the case of the Complainant/P.W.1.

9.D.W. 1/Chandra in her cross examination admitted that she had herself received loan from the Complainant. The learned counsel for the Revision Petitioner/Complainant invited the attention of this Court to paragraph Nos.16 and 17 of the discussion in the judgment of the learned Trial Judge, where, the learned Trial Judge discussed the evidence of the Complainant and the evidence on the side of the accused as D.W.1. In the subsequent paragraphs, the learned Trial Judge had faltered by discussing things that are against the statutory presumptions available before the Court, thereby, dismissing the complaint in the subsequent paragraphs which is against the evidence available before the Court. The conduct of the accused in not disputing the issuance of cheque or signature on the cheque and avoiding the witness box are strong presumptions against the accused, instead, the learned Judicial Magistrate (Fast Track Court), Thanjavur had found reasons which are against the statutory presumptions in favour of the Complainant and the evidence before the learned Trial Judge and dismissed the complaint based on the irrelevant factors that the Complainant had not executed any promissory note in favour of his brother/P.W.2, when he obtained a loan of Rs.3,00,000/- from his brother and coupled with the fact that the Complainant had also not executed any promissory note while extending a loan of Rs.5,40,000/- to the accused herein, who is an Auto Rickshaw driver in Chennai. The learned Trial Judge had also observed that the Complainant is at Thanjavur and the accused is at Chennai, how the Complainant might have advanced such huge amount to the accused.

10.In the cross examination of D.W.1, she admitted that she herself borrowed money from the Complainant. For borrowing money, she had handed over the document regarding immovable property at Mylam near Tindivanam. That shows that the Complainant has obtained document regarding property as collateral security, so that he can initiate action when the borrower had not repaid the amount. Likewise, the Complainant had obtained R.C.Book and license of the Auto Rickshaw driver/accused as valid documents for extending the amount of Rs.5,40,000/-. When the accused himself had not agitated those things, the Court need not consider those things. The Complainant had sent statutory notice to the accused but the accused had not replied to the same. The accused himself engaged a counsel but he had not entered the witness box. In the cross examination of the Complainant as P.W.1 and the brother of the Complainant as P.W.2, nothing was elicited in favour of the accused from their cross examination. When that be the case, the learned Trial Judge

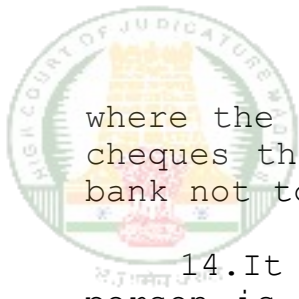


dismissing the complaint inspite of the evidence against the accused and inspite of the fact that the Complainant had proved the case through documentary evidence is found to be perverse. Cases under Section 138 of the Negotiable Instruments Act stand on a different footing from the cases under General Criminal Law cases i.e., the case of murder and attempt to murder, hurt on previous enmity. In those cases the Prosecution has to prove the case beyond reasonable doubt is the rule, to convict an accused.

11. In a case under Section 138 of the Negotiable Instruments Act, the presumptions under Sections 118 and 142 of the Negotiable Instruments Act, 1981 are in favour of the Complainant. Not only that, the Complainant had proved his case through cogent evidence. In the cross examination of the Complainant as P.W.1, nothing was elicited favouring the accused. The fact that Chandra/D.W.1 herself admitted that having borrowed loan from the Complainant is in favour of the Complainant not only that the defence of the accused that the Complainant had received ten blank cheques from Chandra for the amount borrowed by her and he filled up only one cheque and presented it before the bank, whereupon it was returned and the same was used to lodge the complaint by sending statutory notice and subsequent to sending of notice, this case had been filed. It is only a defence and it is for the accused to let in evidence to disprove the case of the Complainant. When the Complainant had proved the claim through cogent evidence, the burden shifts on the accused. The accused had not come forward and he had avoided the witness box.

12. The conduct of the accused in avoiding the witness box had to be considered by the Court. The Court has to draw adverse inference against the accused under Section 114 of the Indian Evidence Act. In spite of the fact that he had received statutory notice regarding a warning given under Negotiable Instruments Act, that if he does not respond to the notice, a complaint will be lodged, the accused had remained silent. After filing of the complaint, after issuance of summon through Court only, the accused entered appearance and contested the claim. He had offered his explanation under Section 313 of Criminal Procedure Code against the incriminating evidence against him. That will not be sufficient and his conduct in not entering the witness box as D.W.1 is the strong presumption against him and in favour of the Complainant to the Court. The learned Trial Judge had missed the very circumstances available in favour of the Complainant before the Court.

13. If the defence case is true that he had issued ten blank cheques properly signed by the accused to the Complainant towards repayment of the amount borrowed and the Complainant had filled up and presented to the Bank behind the back of the accused, what prevented the Accused from issuing reply to the statutory notice? He had not done so. He ought to have issued notice calling upon the



where the accused has his savings account not to pay amount for the cheques that he had handed over to the Complainant and advised the bank not to pay and stop payment. He had not done so.

14.It is found that in any money transaction that when a person is in need of a loan approaches the acquaintance or friend, who has resources to extend loan. After availing the loan when the lender seeks return of money from the borrower, taking all the defence that the persons who had issued or extended loan does not have resources to extend the loan or they had not obtained license to deal with the bank, banking and money lending business. These type of defence are unacceptable defence. Therefore, the learned Trial Judge ignored the evidence available before herself by giving importance to the defence arguments, inspite of the presumptions that are stronger against the accused and the evidence that was let in by the Complainant and his brother and the presumption available under the Negotiable Instruments Act against the drawer of the cheque.

15.The learned Trial Judge dismissing the complaint amounts to mis-carriage of justice. Therefore, the Revision case filed by the Complainant is accepted and allowed and the Rulings relied on by the learned counsel for the Revision Petitioner/Complainant in the reported ruling is found applicable to the facts of the case.

The learned counsel for the Revision Petitioner/Complainant relied on the following rulings:-

(i) *Umarani Vs. Velan* reported in 2007 (1) TLNJ (Cr1.) 342.

Negotiable Instruments Act 1881 Section 138 - Offence by Accused under Section 138 of Negotiable Instrument Act - A private complaint under Section 200 of Criminal Procedure Code by complaint against accused - Accused borrowed an sum of Rs.35,000/- as hand loan and again Rs.15,000/- for his business transaction from Complainant - Issued five cheques to discharge his debts. - Cheques dishonoured on the ground that there was no sufficient funds - Guilt against the accused has been proved beyond any reasonable doubt for an offence under Section 138 of Negotiable Instruments Act - The Trial Judge has convicted the accused and sentenced him to undergo simple imprisonment for one month and also slapped a fine of Rs.35,000/- with default sentence. - Appeal by accused - Complainant has failed to present the cheque within six months - There was no evidence to show that there was legally enforceable debt on the date of drawl of the cheque - Set aside the judgment of the trial judge - Accused acquitted.

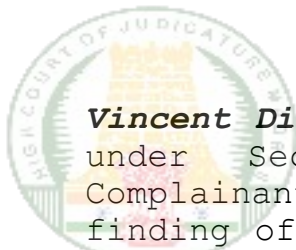


Appeal by Complainant in High Court - Cheques dated 28.2.97 were presented to bank on 1.3.97 - It is mandatory that the cheque is presented to "the bank" within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. When a post-dated cheque is written or drawn, it is only a bill of exchange. The post dated cheque becomes a cheque under the Act on the date which is written on the said cheque and the six months period has to be reckoned - The attitude of the accused in not sending any reply to the notice received by him itself will derive to a conclusion to show that the borrowing of the accused from the complainant has been proved - The appeal is allowed and the judgment on the file of the II Additional Sessions Judge, Pondicherry, is set aside and the judgment of the trial Court in on the file of the Chief Judicial Magistrate, Pondicherry, is restored.

(ii) Shri Prakash Rao -vs- Shri Pedro Vincent Dias reported in **2010 (2) DCR 31.**

Negotiable Instruments Act, 1881 - Section 139 - Income Tax Act - Section 269SS - Advance money not reflected to income tax return - Legality - Held - Section 269 SS of Income Tax Act only provides for penalty for not reflected the advance amount in income tax return - But it does not say that if money is advanced in contravention of Income Tax Act it would be un recoverable [Para - 24]

16.The learned counsel for the Revision Petitioner/Complainant relied on the rulings reported in **2007 (1) TLNJ (Crl.) 342** in the case of **Umarani Vs. Velan** where the accused after receiving notice from the Complainant had not sent a reply. This will derive to a conclusion go to show that the borrowing of the accused from the Complainant has been proved. The same ratio applies to the case before this Court also. Reliance was placed by the learned counsel for the Revision Petitioner to the reported ruling of the Hon'ble High Court of Bombay in **2010 (2) DCR 31** in the case of **Shri Prakash Rao -vs- Shri Pedro Vincent Dias.** Applying the same ratio, the Complainant having not at all filed proof of income tax assessment will not adverse to the Complainant. If income tax is not paid, it is for the Income Tax Authorities to impose penalty on the Complainant for the relevant period of assessment. It is not for the criminal Court wherein the Complainant had filed complaint under Section 138 of Negotiable Instruments Act where the Complainant had proved the case against the accused. Therefore, based on the said rulings in **2007 (1) TLNJ (Crl.) 342** in the case of **Umarani Vs. Velan** and **2010 (2) DCR 31** in the case of **Shri Prakash Rao -vs- Shri Pedro**



Vincent Dias and the discussion in para Nos.8 to 14 above, the case under Section 138 of Negotiable Instruments Act of the Complainant/Revision Petitioner had been proved. Instead the finding of the learned trial Judge, Judicial Magistrate (Fast Track Court), Thanjavur dismissing the complaint is considered as perverse. In the light of the evidence available before the learned trial Judge under Ex.P1 to Ex.P8 and the conduct of the accused himself in not entering the witness box, the learned trial Judge ought to have drawn adverse inference against the accused. Instead of entering the witness box and deposing evidence as Defence witness, the accused had examined his sister as D.W.1. The sister of the Accused in her evidence as D.W.1 had stated that she had borrowed a sum of Rs.1,00,000/- from the Complainant and issued cheque. She had furnished the document regarding immovable property at Mayilam as a collateral security for the Complainant to initiate recovery of the said amount and also she had admitted that her brother/accused herein had handed over the Registration Certificate of the Auto Rickshaw to the Complainant at the time of borrowal of the amount. Those things were not considered by the learned Judicial Magistrate (Fast Track Court), Thanjavur. Therefore, the finding of the learned Judicial Magistrate (Fast Track Court), Thanjavur, dismissing the complaint in spite of strong presumption available before the learned Judicial Magistrate, Thanjavur, is found to be perverse. The accused had not replied to the statutory notice issued by the Complainant. The accused not denying the signature on the cheque had caused presumption in favour of the Complainant before the Court which was ignored by the learned Judicial Magistrate. The appeal preferred by the Complainant against the finding of the learned Judicial Magistrate was also dismissed by the learned District Judge, on consideration of materials which were irrelevant before the Court. Therefore, in the light of the above discussion and in the light of the rulings reported in **2007 (1) TLNJ (Crl.) 342** in the case of **Umarani Vs. Velan** and **2010 (2) DCR 31** in the case of **Shri Prakash Rao -vs- Shri Pedro Vincent Dias**, the Point For Consideration is answered in favour of the Complainant/Revision Petitioner and against the accused/respondent.

17.In the result, this Criminal Revision is **(*)allowed**. The judgment and the conviction recorded by the I Additional District and Sessions Judge (PCR), Thanjavur in C.A.No.31 of 2015 confirming the order passed by the learned Judicial Magistrate (FTC), Thanjavur in S.T.C.No.515 of 2013 is set aside. The respondent/accused is convicted under Section 138 of Negotiable Instruments Act to undergo Simple Imprisonment for one year and to pay a sum of Rs.5,40,000/- (Rupees Five Lakh Forty Thousand Only) as compensation under Section 357 of Cr.P.C.,



18.The learned Judicial Magistrate (FTC), Thanjavur, is directed to issue warrant to secure the respondent/accused to undergo the period of sentence and to collect the cheque amount from the accused under Section 357 of Cr.P.C.

(*)Amended vide Order Dated:20.09.2021 in Cr1.RC (MD)No.281/2017

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ias/dh

To:

- 1.The I Additional District and Sessions Judge (PCR),
Thanjavur.
- 2.Do Through The Principal District Judge,
Thanjavur District.
- 3.The Judicial Magistrate (FTC),
Thanjavur.
- 4.The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.

Copy to:-

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

+1cc to M/s.G.KARNAN, ADVOCATE, SR.NO.28143 Dated:03.09.2021.

Cr1.R.C. (MD) No.281 of 2017

03.09.2021

DKS (CO)

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