IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.140 of 2012

K.Vimala ...Appellant/Complainant

Vs.

1.Veenus Textiles Suppliers,
10-A, Kalapana Road,
Jose Building,
Near Kaliamman Koil,
Udumalpet.

2.C.Venugopal,
Prop: Veenus Textiles Suppliers,
10-A, Kalapana Road,
Jose Building,
Near Kaliamman Koil,
Udumalpet. ... Respondents/Accused 1 & 2

Prayer :- This Criminal Appeal has been filed under Section 378 Cr.P.C., against the judgment passed in C.C.No.206 of 2005 dated 08.02.2011 on the file of the Judicial Magistrate No.I, Udumalpet and the same is liable to be set aside.

For Appellant : Mr.M.N.Balakrishnan

For Respondents: Mr.R.Babu

JUDGMENT

This Appeal is preferred by the complainant against the order dated 08.02.2011 passed in C.C.No.206 of 2005 filed under Section 138 of the Negotiable Instruments Act, which came to be dismissed by the trial Court for want of evidence that the subject cheque was issued to discharge legally enforceable debt.

2. The substance of a complaint is that on 08.02.2004, 2nd accused came to the house of the complainant and borrowed Rs.1,00,000/- for improvement of 1st accused/business and based on the assurance that the loan will be discharged with interest, the complainant gave Rs.1,00,000/- to 2nd accused. As a security, 2nd accused as a proprietor of 1st accused concern, gave

cheque from the account maintained by 1st accused/Firm namely Veenus Textiles Suppliers. Thereafter, 2nd accused failed to repay the loan amount with interest, within 6 months as assured. After repeated demand, he gave the cheque dated 21.12.2004 and when the same was presented for collection, it was returned for a reason 'insufficient funds'.

3. The specific case of the complainant is that 1st accused/Veenus Textiles Suppliers is owned by 2nd accused and as a Proprietor of the said Firm, 2nd accused is administering the affairs of 1st accused/Firm. Further, the specific averment made in the complaint is that when the complainant demanded back the money from 2nd accused, he gave the cheque dated 21.12.2004 for Rs.1,00,000/- and assured that the cheque will be realised on presentation date and with that assurance, 2nd accused took back the Promissory Note given to the complainant while availing the loan. On receiving the intimation from the Bank, statutory notice was issued to 2nd accused and thereafter, the complaint was lodged.

4. To prove the case, the complainant examined herself as P.W.1 and marked 8 exhibits. 2nd accused to rebut the burden and to prove his innocence, examined himself as D.W.2 and marked 1 document which is cheque book counter foil. D.W.1 & D.W.3 were also examined on the side of 2nd accused.

5. The specific defence taken by 2nd accused is that he and the complainant had no financial contract. The cheque was never given to the complainant. In fact, 1st accused/Firm was closed in the year 1995 itself. While he was active in business, he borrowed Rs.5,000/- from one Subramani who was running a Finance Company and as a security, gave a cheque to him. Thereafter, when 2nd accused discharged the loan borrowed from Subramani, he asked him to return back the cheque and Subramani promised to return it within a week since he is busy with annual account reconciliation. To substantiate the said defence, 2nd accused has marked Ex.D1 which is cheque book counter foil. The subject cheque was in use during the year 1995. The other defence's witness had deposed to the effect that 1st accused/Firm namely M/s.Veenus Textiles Suppliers was closed in the year 1995 itself.

6. The trial Court after appreciating the evidence held that though the complainant claims that she is known to 2nd accused, she admits that after her marriage she settled at Karadikottam, whereas, the money transaction alleged to have taken place at Udumalpet where her father resides. The trial Court has also observed that the complainant is not a resident of Udumalpet or carrying any business at Udumalpet and she has no separate source of income or property in her name.

7. In the cross-examination, the complainant says that the cheque was given to her at the time of borrowing the money whereas in the complaint, she says that the money was borrowed on 08.02.2004 and cheque was issued on 21.12.2004. Regarding the source of income to lend a sum of Rs.1,00,000/, the complainant could not give any reasonable explanation. Her inconsistent evidence regarding the source coupled with the contradictions elucidated in the cross-examination that she lived in Udumalpet during the year 1995, the money transaction between her and 2nd accused was from the year 2000. Further, her inability to produce the sale deed of the property which she alleged to have been the source for lending Rs.1 Lakhs, cumulatively put together made the trial Court to hold that the complainant has created doubts as to the existence of debt or liability. Therefore, the presumption under Section 138 of the Negotiable Instruments Act, has been rebutted and the prosecution/complainant has failed to prove her case. Having failed to prove the existence of an enforceable debt or liability, the accused is entitled for acquittal.

8. Aggrieved by the order of acquittal, the present Appeal is filed wherein, it is stated that the trial Court ought not to have accepted the case of the defence to hold that he has discharged the burden while the signature found in the cheque is accepted and the account maintained by 2nd accused is also accepted.

9. The presumption under Section 139 of the Negotiable Instruments Act requires proof of fundamental facts and prima facie it is the burden of the accused to discharge the presumption by placing believable evidence. D.W.2 & D.W.3 are not reliable witnesses and the trial Court itself has expressed doubt about the reliability. While so, the trial Court ought not to have discharged the accused.

10. This Court on reappreciating the evidence relied on by both the parties, find that 2nd accused has proved that during the year 2004, he was not running 1st accused/Firm namely M/s.Veenus Textiles Suppliers and it has been closed long back. Secondly, he has also proved that the subject cheque was issued by him in the year 1995 and the rest of the cheque in the said cheque book has been used by him during the year 1995. In the said context, his defence that while he was active in business, he borrowed money from one Subramani which he discharged within 5 months. Though this part of defence cannot shift the burden in toto, the fact that the complainant is a non-working, non-earning member, had lent a loan of Rs.1,00,000/- and failed to show prima facie source of income, creates doubt about the case of the complainant and the allegation that the cheque was issued for discharging of liability not even prima facie proved,

which has inured a benefit of acquittal to the accused. When there are two views possible and the view favourable to the accused been taken into consideration for his acquittal by the trial Court, this Court finds that the benefit inured to the accused shall not be deprived by entertaining this appeal.

11. For the foregoing reasons, this Criminal Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sni

To

1.The Principal District & Sessions Judge,
Tiruppur.

2.The Judicial Magistrate No.I,
Udumalpet.

3.The Chief Judicial Magistrate
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.B.Vijayakumar, Advocate, S.R.No.40000

Crl.A.No.140 of 2012

CA(CO)
SB(13/07/2022)