IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.1158 of 2022

A.Ashok Kumar		... Appellant
	Vs.	
Kaliappan		... Respondent

Prayer : Criminal Appeal filed under Sections 378 of Criminal Procedure Code, praying to set aside the acquittal Judgment dated 03.03.2016 passed by the learned Judicial Magistrate No.1, Salem, in C.C.No.126 of 2012.

For Appellant : Mr.L.Mouli

For Respondent : Mr.B.Vasudevan

JUDGMENT

This Criminal Appeal has been filed seeking to set aside the Judgment of acquittal dated 03.03.2016 passed by the learned Judicial Magistrate No.1, Salem, in C.C.No.126 of 2012.

2. The appellant is the complainant and the respondent is the accused in C.C.No.126 of 2012. The appellant filed a private complaint under Section 200 of Cr.P.C. against the respondent for the offence under Section 138 of Negotiable Instruments Act (in short "the NI Act") and the same was taken on file in C.C.No.126 of 2012 by the learned Judicial Magistrate No.1, Salem. To prove the case of the appellant/complainant, he examined himself as P.W.1 and marked six documents as Exs.P1 to P6. On the side of the defence, the respondent/accused examined himself as D.W.1 and marked 5 documents as Exs.D1 to D5. The learned Magistrate, after trial, on finding that the appellant/complainant has failed to prove his case beyond all reasonable doubt, dismissed the complaint by judgment dated 03.03.2016 and acquitted the respondent.

3. Aggrieved over the finding of the trial Court and the judgment of acquittal, the complainant is now before this Court with the present criminal appeal.

4. The specific case of the appellant is that the respondent had borrowed a sum of Rs.1,80,000/- on 01.07.2011 from him and to repay the said amount, he also issued a cheque bearing No.303275 dated 01.06.2012 and when appellant presented the said cheque in his bank on 01.06.2012, it was returned for the reasons “insufficient funds” on 05.06.2012 and the said cheque was returned along with a memo on 11.06.2012. Hence, the appellant issued a statutory notice on 18.06.2012. But the same was not received by the respondent and again, the appellant issued notice to the respondent on 04.07.2012 with a correct address and the same was served on the respondent on 06.07.2012. Even after the receipt of the statutory notice, within the statutory period, he neither repaid the money nor sent any reply and therefore, the appellant was constrained to file a private complaint against the respondent under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act.

5. The learned counsel for the appellant would submit that the respondent had borrowed a sum of Rs.1,80,000/- from him on 01.07.2011 and paid interest upto 01.06.2012. Thereafter, when the appellant made a request to the respondent to repay the amount, the respondent issued a cheque dated 01.06.2012 for a sum of Rs.1,80,000/- and the appellant presented the said cheque on the same day. But the same was returned on 05.06.2012 for the reasons “insufficient funds”. Hence, the appellant issued a statutory notice. However, the respondent neither paid the cheque amount nor issued any reply to the notice. Hence, the appellant filed a private complaint under Section 200 Cr.P.C. before the Judicial Magistrate No.1, Salem, for the offence under Section 138 of Negotiable Instruments Act. The learned Magistrate taken the complaint on file in C.C.No.126 of 2012 and after trial, dismissed the complaint by order dated 03.03.2016. Therefore, he has has filed the present appeal before this Court. He would further submit that the respondent himself admitted the signature in the cheque. Though the respondent has stated that the said cheque was issued in the year 2006 and not on 01.06.2012, once he admitted the signature in

the cheque and the execution of cheque, there is a statutory presumption under Section 139 of Negotiable Instruments Act that the cheque was issued towards legally enforceable debt, whereas the learned Magistrate failed to consider the fact and only given much importance to the fact that the respondent has given complaint to the police and to the Chief Minster's Cell in the year 2009. The Magistrate failed to appreciate the statutory presumption that once signature is admitted, the law presumes that the cheque has been issued towards the discharge of legally enforceable debt. Therefore, the Judgment of the Magistrate is liable to be set aside and the respondent has to be convicted and compensation has to be allowed.

6. The learned counsel for the respondent would submit that the appellant has clearly admitted in his cross examination that the appellant used to give finance on the vehicles and the respondent was acting as an agent and if the respondent brings customers, the appellant would pay the respondent a sum of Rs.300/- as commission for each customer. He would submit that the respondent has introduced upto 30 customers to the appellant and subsequently the persons who had borrowed money from the

appellant, did not repay the same and therefore, the appellant insisted the respondent to collect all the money from the borrowers or else, he has to pay the money of the unpaid borrowers. As such, there was a dispute between them and on 06.04.2009, the appellant along with hooligans went to the house of the respondent and threatened the respondent and his wife to pay the money of the unpaid borrowers. Therefore, the respondent preferred a complaint before the Jurisdictional Police and since, no action was taken, on 11.04.2009, he sent petitions to the Chief Minister's Cell and also to the Higher Officials in the police department. When there was such a dispute between the appellant and the respondent in the year 2009 itself, it is not possible for the appellant to lend a sum of huge sum of Rs.1,80,000/- to the respondent in the year 2011. Though the respondent admitted the signature found in the cheque, it was not issued on 01.06.2012 as stated by the appellant. During the year 2006, the respondent had borrowed a sum of Rs.10,000/- from the appellant and issued the subject matter of cheque and subsequently, he repaid the said amount. Therefore, mere production of cheque is not sufficient. The appellant has to prove that the cheque was issued to discharge the legally enforceable debt. The presumption under Section 139 of Negotiable Instruments Act, is a rebuttable presumption. The accused need not rebut the presumption by let in any direct evidence. The accused can always rebut the presumption by preponderance of probability. In this case, the respondent has rebutted the presumption even by way of cross examination wherein, the appellant himself admitted the transaction and the relationship between them and he also admitted that there was a dispute between them even in the year 2009 itself. Therefore, the possibility of lending money in the year 2011 is not possible and the respondent rebutted the presumption in the manner known to law by preponderance of probability. Hence, the trial Court rightly appreciated the evidence and dismissed the complaint filed by the appellant. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

7. Heard Mr.L.Mouli, learned counsel for the appellant and Mr.B.Vasudevan, learned counsel for the respondent and perused the materials available on record.

8. Admittedly the appellant is the complainant. The respondent is the accused in C.C.No.126 of 2012 on the file of the Judicial Magistrate No.1, Salem. The said complaint was dismissed by order dated 03.03.2016 against which, the present appeal has been filed by the complainant.

9. It is settled proposition of law that when a complaint is filed, the complainant has to substantiate his case. In this case, the respondent not denied the signature found in the cheque. However, he has stated that the said cheque was not issued by the respondent in they year 2012 as projected by the appellant in this complaint. Even during cross examination, the appellant admitted that the appellant was doing business of lending money on vehicles and the respondent acted only as a commission agent and used to canvass customers and introduced the customers to the appellant for which, the appellant used to pay Rs.300/- per customer, as commission to the respondent and till 2009, there was no dispute between the appellant and respondent. In the year 2009, there was a dispute between the appellant and the respondent and subsequently, the respondent sent a complaint to the Jurisdictional police and also to the

Chief Minister's Cell and this fact was also admitted by the appellant. If that be the case, as pointed out by the learned counsel for the respondent, when there was dispute between the appellant and the respondent even in the year 2009 itself, how the appellant could have lent such a huge sum of Rs.1,80,000/- to the respondent on 01.07.2011. Further, the appellant has not proved that subsequently, there was a cordial relationship between the appellant and the respondent. More over, the appellant has clearly admitted during cross examination that he is not having any document to show that he lent the said sum of Rs.1,80,000/- to the respondent on 01.07.2011 and he has not obtained any document from the respondent on the date of lending of money. Therefore, it is unbelievable that a person lending such a huge amount of Rs.1,80,000/- to the person with whom he has got dispute that too without any supporting document is not believable. Subsequently, after about 11 months, the subject matter of cheque is alleged to have been obtained from the respondent for the loan amount which is also highly unbelievable.

10.Though the signature found in the cheque is not disputed, the presumption under Section 139 of Negotiable Instruments is a rebuttable presumption. The burden of proof is not that much as heavy as that of the complainant and the accused need not rebut the presumption by let in any direct evidence. The accuse can always rebut the presumption by preponderance of probabilities.

11. In this case, the respondent has established the defence by preponderance of probabilities that earlier there was a transaction between the appellant and the respondent from the year 2006 to 2009 and there was dispute between them in the year 2009. When that be the case, unless the appellant establishes his case with supportive document that even after the year 2009, there was a cordial relationship between them and there was a money transaction between them, this Court cannot believe that the appellant lent such a huge amount of Rs.1,80,000/- to the respondent.

12. It is settled proposition law, in the appeal against acquittal normally the appellate Court will not interfere with the Judgment of the trial Court unless compelled circumstance warrants interference or

perversity in the appreciation of evidence.

13. In this case the appellant has not established any compelled circumstances to interfere with the Judgment of the trial Court. Therefore, this Court does not find any merit in this appeal and the appeal is liable to be dismissed.

14. Accordingly, this Criminal Appeal is dismissed at the admission stage.

08.11.2022

ksa-2
Index:Yes/No

P.VELMURUGAN, J

ksa-2

To
1. Judicial Magistrate No.1, Salem,

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

Criminal Appeal No.1158 of 2022

08.11.2022