IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 03.10.2023

Delivered On : 21.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.231 of 2015

P.Sethuramakrishnan ... Appellant/Complainant

Vs.

S.Ramesh ... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 (2) of Cr.P.C., to admit this Appeal on file, call for records from the trial Court namely the learned Judicial Magistrate No.6, Salem, duly quash and set aside the Judgment of the lower Court by convicting the Respondent/Accused in C.C.No.164/2012 on the file of the learned Judicial Magistrate No.6, Salem.

For Appellant : Ms.S.Yogalakshmi for Mr.A.Thiyagarajan

For Respondents : No Appearance

O R D E R

This Criminal Appeal has been filed to set aside the Judgment of the learned Judicial Magistrate No.6, Salem by convicting the Respondent/Accused in C.C.No.164/2012.

2. The brief facts which are relevant for consideration in the Appeal are as follows:

The Complainant sold his rig bore well lorry bearing Registration No. KN 01 ML 4766 and supporting vehicle bearing Registration No. KA 01 A 9955 and both vehicles totaling Rs.41,00,000/- to three persons viz., Ramesh, Thirumurugan and Gopal. At the time of sale, three persons jointly paid Rs.20,00,000/- and offered to pay the balance of Rs.21,00,000/- within a month. Ramesh issued cheque bearing No.003795 for Rs.15,00,000/- drawn on State Bank of Mysore, Attur Branch. After one month, the Complainant presented the cheque to his Bank and the same was returned for insufficient funds. Therefore, the Complainant had caused legal notice dated 16.07.2012 to the said Ramesh/Respondent herein. He had received the same on 17.07.2012, but had not sent reply. The Complainant waited for 15 days, expecting that the Respondent will arrange funds and settle the dues. Since he had not settled the dues, as per the direction in the notice dated 16.07.2012, the Complainant had preferred the private Complaint before the learned Judicial Magistrate – VI, Salem, for the offence committed by the Respondent under Section 138 r/w. 142 of Negotiable Instruments Act. After recording the sworn statement of the Complainant and on perusal of the documents, the learned Judicial Magistrate – VI, Salem, had taken cognizance of the offence and numbered the Complaint as C.C.No.164/2012 issued summons to the Accused. On appearance of the Accused furnished copy of the Complaint under Section 207 Cr.P.C., and questioned the Accused. The Accused denied the charge of Section 138 of Negotiable Instruments Act, the learned Judicial Magistrate – VI, Salem had ordered the trial. During the trial, the Complainant had examined himself as P.W-1 and marked documents as Ex.P-1 to Ex.P-8. The Accused through his Counsel cross-examined P.W-1. During cross-examination, he had marked the documents viz., Ex.D-1 and Ex.D-2. The Manager of State Bank of Mysore, Attur Branch where the Accused maintained his bank account, was examined as P.W-2. The Complainant evidence was closed with P.W-2. The Accused did not let in evidence to disprove the claim of the Complainant. After closing of the evidence, after hearing the arguments, the learned Judicial Magistrate – VI, Salem by Judgment dated 17.12.2014 in C.C.No.164/2012 dismissed the Complaint and acquitted the Accused. Aggrieved by the Judgment of acquittal, as per the Judgment of this Court in the case of ***Rajalingam Vs. Suganthalakshmi*** in ***2020 (4) CTC 1***, the Appeal against the acquittal is preferred before this Court.

3. The learned Counsel for the Appellant submits that the learned Judicial Magistrate – VI, Salem had examined the Accused under Section 313 Cr.P.C., regarding incriminating evidence available against the Accused. At that time, the Accused is duty bound to explain his version regarding the incriminating evidence. After completion of proceedings under Section 313 Cr.P.C., the Accused is expected to let in evidence in support of his explanation. Here in this case, the Accused offered his explanation why he did not enter the witness box and let in rebuttal evidence. The evidence of the Complainant had not been challenged and the evidence of the Complainant probablized the case of the

Complainant. While so, without the evidence of the Accused as D.W-1, the learned Judicial Magistrate had misdirected herself and misinterpreted the evidence on the side of the Complainant, thereby acquitted the Accused from the charge under Section 138 Negotiable Instruments Act. The Judgment of the learned Judicial Magistrate – VI, Salem acquitting the Accused is perverse. When the Negotiable Instruments Act cast a burden on the Accused that there is presumption in favour of the Complainant, the learned Judge ignored those presumption and rejected the evidence of the Complainant. Thereby, acquitted the Accused which had caused miscarriage of justice and therefore the same is to be set aside.

4. In the Appeal, this Court had issued notice through the learned Judicial Magistrate to the learned Counsel who appeared for the Accused before the trial Court and also through the Police on the Accused in his address. Notice was served and accordingly report was sent by the learned Judicial Magistrate – VI, Salem. The name of the Accused was also printed in the cause list, but he had not engaged any Counsel. The Appeal was heard.

5. Point for Consideration:-

Whether the Judgment of the learned Judicial Magistrate – VI, Salem dismissing the Complaint in C.C.No.164/2012 and acquitting the Accused from the charge under Section 138 of Negotiable Instruments Act is perverse and is to be set aside?

6. Heard the learned Counsel for the Appellant, perused the evidence before the trial Court as Complainant/P.W-1 and the Manager/P.W-2 and documents under Ex.P-1 to Ex.P-7 and the Judgment of the learned Judicial Magistrate – VI, Salem in C.C.No.164/2012 dated 17.12.2014.

7. On perusal of the Judgment, it is found that the learned Judge had not only considered the proceedings under Section 313 Cr.P.C., to dismiss the Complaint but also, he had relied on the cross-examination of the Complainant as P.W-1. As per the Judgment, it is found that the Accused had filed only the following documents under Ex.P-1 is the

cheque issued by the Accused in C.C.No.164/2012, Ex.P-2 is the written memo dated 03.07.2012, Ex.P-3 is the memo for return of the cheque issued by the Bank where the Complainant maintained his account. Ex.P-4 is the statutory notice dated 16.07.2012 issued by the Complainant to the Accused. Ex.P-5 is the acknowledgment card duly signed by the Accused dated 17.07.2012. Ex.P-6 is the agreement dated 03.02.2012 entered into between the Complainant and the Accused. Ex.P-7 is the Account with the Sundaram Finance where from the Complainant is alleged to have obtained loan regarding the rig bore well lorry and supporting vehicle. Ex.P-8 is the copy of the statement of bank account of the Accused. Ex.D-1 is the copy of the Complaint given by the Complainant regarding the same cause of action against another Accused in C.C.No.120/2012. Ex.D-2 is the statutory notice issued by the Complainant for the same cause of action against another Accused by name Thirumurugan. On appreciation of evidence, the learned Judicial Magistrate – VI, Salem had discussed the admission made during the course of the cross-examination by the Complainant as P.W-1 wherein he claims ignorance regarding the payments made by the Accused to the Sundaram Finance. In the cross-examination, the Complainant admits that the rig bore well lorry and supporting vehicles where under mortgage/pledged with the Sundaram Finance. He claims ignorance of the outstanding dues of Rs.21,00,000/- as per his Complaint, with the Sundaram Finance. Also he claims that three persons viz., Ramesh, Thirumurugan and Gopal jointly liable to pay Rs.21,00,000/- and balance sale consideration for the sale of rig bore well lorry and supporting vehicle. To the pointed question, why he had issued statutory notice only to Ramesh, the complainant as P.W-1 states that the cheque in this case was issued by Ramesh. The complainant was confronted with the certified copy of the Complaint in the different case for the same cause of action filed by him against Thirumurugan in C.C.No.120/2012. He had admitted the same. The said C.C.No.120/2012 is filed against Thirumurugann regarding outstanding dues for the same cause of action for Rs.15,00,000/-. If that be so, for the outstanding of Rs.21,00,000/-, he had filed two complaints, the present Complaint under C.C.No.164/2012 against Ramesh and C.C.No.120/2012 against Thirumurugan for Rs.15,00,000/-. Therefore, for the outstanding of Rs.21,00,000/- both had to pay Rs.30,00,000/-. In the course of the cross-examination, he had stated that only Ramesh had issued cheque.

Therefore, he had not caused statutory notice to other Accused/Thirumurugan and Gopal whereas in the subsequent part of the cross-examination, he admits that he had filed similar case for Rs.15,00,000/- against Thirumurugan in which statutory notice was not issued to Ramesh and Gopal.

8. In the course of the cross-examination, he had admitted that he had paid Rs.1,00,000/- on 20.02.2012; Rs.1,00,000/- on 05.03.2012; Rs.1,00,000/- on 31.03.2012; Rs.1,00,000/- on 28.04.2012; Rs.1,00,000/- on 30.04.2012; Rs.1,00,000/- on 30.06.2012; Rs.1,00,000/- on 21.08.2012; Rs.49,000/- on 21.09.2012 and Rs.4,30,000/- on 29.11.2012. The cheque for which this Complaint was filed dated 02.07.2012 and subsequent to the cheque, the Complainant had paid on 21.08.2012, 29.08.2012, 29.12.2012 and 05.12.2012 to the Sundaram Finance. Therefore, the Accused had paid to Sundaram Finance for the amount the Complainant failed to pay. Therefore, the evidence of the Complainant with the Accused failed to pay the sale consideration is found suspicious by the learned trial Judge, Judicial Magistrate – VI, Salem. The contention of the Accused that the Accused had paid

Rs.11,50,000/- in the account of State Bank of Mysore where the Complainant maintained his account. Therefore, admitted by the Complainant claiming that he used to pay part by part. Therefore, he was unable to give exact figure. The photo-state copy of the sale agreement entered into between the Complainant and the Accused. The copy of which is available with the Accused wherein the Complainant had admitted having made an endorsement regarding payments made by the Accused towards the outstanding dues, it was also admitted in the cross-examination. Therefore, the learned Judicial Magistrate – VI, Salem as trial Judge had observed that the Complainant had not specifically stated the facts fairly regarding the outstanding dues with the Sundaram Finance. To support his contention, he had not marked the evidence of any Official of the Sundaram Finance. Therefore, instead Rs.21,00,000/- original outstanding was Rs.11,40,000/- which the Accused claimed to settle the Sundaram Finance. Therefore, the Accused had not paid the Complainant. What was issued as cheque by the Accused to the Complainant was only a security. The outstanding with the Sundaram Finance regarding the vehicle loan for rig (borewell) lorry and supporting vehicle by the Complainant was settled with the Sundaram Finance by the Accused. Therefore, the cheque in the hands of the Complainant had to be returned. Instead the Complainant had issued statutory notice directing the Accused to pay outstanding of Rs.15,00,000/-.

9. As per the Complaint in C.C.No.164/2012, after purchase of the vehicle by paying Rs.20,00,000/- in cash, remaining balance is Rs.21,00,000/- and three Accused jointly given a cheque in C.C.No.164/2012 for Rs.15,00,000/- and the Complainant had filed similar Complaint in C.C.No.120/2012 against another Accused by name Thirumurugan as per the averments in the Complaint in C.C.No.164/2012, after purchase of the rig (borewell) lorry and supporting vehicle for Rs.41,00,000/-, part payment of Rs.20,00,000/- was paid by three persons viz., Ramesh, Thirumurugan and Gopal and balance amount of Rs.21,00,000/- was pending. While so, the Complaint under C.C.No.164/2012 was filed against Ramesh for Rs.15,00,000/-. Similarly, another Complaint filed against Thirumurugan for Rs.15,00,000/-, for outstanding Rs.21,00,000/-. As per the averments in the Complaint, the Complainant claims Rs.30,00,000/- from two partners separately through Complaint whereas the Accused/partners settled the

dues to the Sundaram Finance directly. Therefore, the Complainant has to give back the cheque issued by Ramesh as security. Instead, he had filed a Complaint for Rs.15,00,000/-, this had made the learned Judicial Magistrate, Salem to observe that the Complainant has not placed the facts as averments in the Complaint fairly, clearly. He had not approached the Court with clean hands. Therefore, dismissed the Complaint and acquitted the Accused.

10. In the light of the discussion in the Judgment of the learned Judicial Magistrate – VI, Salem in C.C.No.164/2012 by Judgment dated 17.12.2014, it is based on the evidence before the learned Judge and not based on the explanation offered by the Accused for the proceedings under Section 313 Cr.P.C., Therefore, the argument of the learned Counsel for the Appellant is rejected.

11. When the Complainant approaches the Court whether criminal court or civil court, he/she shall place all the materials fairly. There is no use of invoking the presumption available under Section 138 of Negotiable Instruments Act as claiming that the presumption is in favour

of the Complainant. Therefore, the learned Judicial Magistrate has to necessarily sentence the Accused and Order compensation under Section 357 Cr.P.C. The purpose of recording evidence is to appreciate facts for concluding the Accused during the fair trial. When the Complainant had not fairly approached the Court with all the relevant facts, the Complainant is not expected to be granted relief by the Court. Therefore, the argument of the learned Counsel for the Appellant that the learned Judicial Magistrate – VI, Salem was carried away by the explanation offered by the Accused under Section 313 Cr.P.C., will not hold good. On perusal of the Judgment by the learned Judicial Magistrate - VI, Salem in C.C.No.164/2012 dated 17.07.2015, in one part of the cross-examination, he claims that the Accused had paid regularly Rs.1,00,000/- within the specified date. We had accepted the suggestion but he is unable to settle the dues and he could not fairly giving the details that how much had been paid by the Accused towards balance sale consideration. As per the Accused, they had paid the entire balance to the Sundaram Finance and thereby clearly Complainant is not liable to Sundaram Finance. While so, the Complainant states that he does not know the other Accused. Cheque was issued by Ramesh only.

Therefore, he had filed the case in C.C.No.164/2012 against Ramesh for the outstanding dues of Rs.15,00,000/-. To prove that, the Complainant had not approached the Court with clean hands, the Accused had obtained certified copy in C.C.No.120/2012 for the same cause of action for the outstanding dues regarding the sale of the rig (borewell) lorry with the same averments against Thirumurugan wherein statutory notice was issued only to Thirumurugan, Ramesh and Gopal. Here, statutory notice was issued to Ramesh and not Thirumurugan and Gopal. Therefore, for the outstanding dues as per the Complaint, instead Rs.21,00,000/- outstanding, the Complainant had filed separate Complaint suppressed the facts that similar Complaint filed against Thirumurugan for Rs.15,00,000/-. Therefore, for outstanding Rs.21,00,000/-, but Rs.15,00,000/- from Ramesh and Rs.15,00,000/- from Thirumurugan totally Rs.30,00,000/- was attempted to recover from both Accused. In this case as well as Accused/Thirumurugan in C.C.No.120/2012, this was taken cognizance by the learned Judicial Magistrate-VI, Salem, by observing that the Complainant had not approached the Court with clean hands.

12. In the light of the admission of the Accused, he had paid Rs.11,40,000/- of the outstanding dues by the Complainant regarding the same vehicle/rig bore well and supporting vehicle with Sundaram Finance and the claim of the Complainant was found suspicious.

13. If the Complainant had settled, clearly giving out all the details in the Complaint without suppressing any material facts, he could have expected the Court to pass Judgment in his favour. When he has suppressed the facts, instead Rs.11,40,000/- he claimed Rs.21,00,000/- outstanding. Instead Rs.21,00,000/- is outstanding, he had filed two cheques one as against Ramesh for Rs.15,00,000/- and another one is against the Partner/Thirumurugan who had purchased the vehicle for the same outstanding of Rs.15,00,000/-. Also, he had not filed the details regarding those outstanding. The learned Judge had found out from the facts available during the evidence of the Witnesses that the Complainant had not approached the Court with clean hands. He had suppressed the material facts regarding outstanding dues with Sundaram Finance. Therefore, the learned Judge had dismissed the Complaint. The dismissal of the Complaint cannot be found at fault by this Court. The

submission of the learned Counsel for the Appellant that the learned Judge had dismissed the Complaint based on the explanation offered by the Accused by proceedings under Section 313 Cr.P.C cannot at all be accepted. Therefore, the Judgment of the learned Judicial Magistrate–VI, Salem dismissing the Complaint is not found perverse. It is a well-reasoned Judgment which does not warrant any interference of this Court.

14. On perusal of the original records submitted by the learned Judicial Magistrate - VI, Salem in C.C.No.164/2012, it is found that the statement of transactions from Sundaram Finance which was marked as Ex.P-7 contains the amount paid on 20.02.2012 Rs.1,00,000; on 05.03.2012 Rs.1,00,000/-; on 31.03.2012 Rs.1,00,000/-; on 28.04.2012 Rs.1,00,000/-; on 10.05.2012 Rs.750/-; on 30.05.2012 Rs.1,00,000/-; on 22.06.2012 Rs.3,600/-; on 30.06.2012 Rs.1,00,000/-; on 21.08.2012 Rs.1,00,000/-; 29.08.2012 Rs.49,000/-; on 29.08.2012 Rs.4,35,450/- and on 05.12.2012 Rs.20,196/-; total comes to Rs.12,08,996/-. Ex.P-6 is the written agreement for sale entered into between the Complainant/Sethuramakrishnan and the purchasers viz., Ramesh S/o.

Subramaniam, Thirumurugan S/o. Rengasamy, Gopal S/o. Palanisamy Gounder "

15. Ex.D-2 is the statutory notice issued on behalf of the Complainant against Thirumurugan one of the Partner of the Accused in C.C.No.164/2012. As per the agreement of sale entered into between the Complainant and Accused under Ex.P-6. Ex.D-1 is the Complaint preferred by the Complainant against the said Thirumurugan for the offence under Section 138 Negotiable Instruments Act in which the averments are the same, as in the Complaint in C.C.No.164/2012. Similarly, notice under Ex.D-2 is as per the averments in the notice as same as in the notice under Ex.P-4 marked in C.C.No.164/2012. Therefore, P.W-1/Complainant was examined on behalf of the Accused regarding the amount paid as per the sale agreement under Ex.P-6 and the payment as found in Ex.P-7 which reads as follows:

> *"நான் மேற்படி வண்டியை விற்கும்போது சுந்தரம் பைனான்ஸில் வண்டி அடமானத்தில் இருந்தது என்றால் சரிதான். அப்போது ரமேஷ் திருமுருகன் கோபால் ஆகியோர்கள் சுந்தரம் பைனான்ஸில் உள்ள தொகையை கட்டிவிடுகிறோம் என்று சொன்னார்கள் என்றால் சரிதான்."*

16. The learned Judicial Magistrate-VI, Salem on perusal of Ex.P-6 and Ex.P-7 and in the light of Ex.D-1 and Ex.D-2 and in the light of the answers in cross-examination by P.W-1 had arrived at a conclusion that the claim of the Complainant seeking Rs.15,00,000/- from the Accused in C.C.No.164/2012 and another Complaint in C.C.No.120/2012 against Thirumurugan for the same transaction independently against the other partner of the Accused with the same averments as in the statutory notice caused in this case. Ex.P-4 and Ex.D-2 are the same averments as in the complaint in C.C.No.164/202 as against C.C.No.120/2012 marked under Ex.D-1, the learned Judge arrived at a conclusion that the averments in the Complaint is found to be not true and not fair against the Accused. When the agreement in Ex.P-6 clearly stated that the purchaser of the vehicle shall pay the dues to Sundaram Finance and they had accordingly paid in installments. After which, as per the agreement under Ex.P-6 purchasers had to pay only Rs.3,00,000/- whereas the Complainant stated that the Accused has to pay Rs.15,00,000/- as per the averments in the Complaint in C.C.No.164/2012. Similarly, the Complaint under Negotiable Instruments Act had been filed for the same averments against the other partner of the Accused/Thirumurugan for

Rs.15,00,000/- which is marked as Ex.D-1, totalling a sum of Rs.30,00,000/-, instead of Rs.21,00,000/-, whereas the averments under Ex.P-6 claims that the purchasers shall pay only Rs.3,00,000/- after settling the dues to the Sundaram Finance by the purchasers, when the Complainant was confronted regarding the recitals in Ex.P-6 and payments made by the purchasers as per the undertaking given by them to the Complainant. Instead of seeking payment of Rs.3,00,000/-, the Complainant filed filled up cheque issued by the Accused as security for Rs.15,00,000/- and filed two Complaints against two partners independently claiming Rs.15,00,000/- each. Thereby, playing fraud on the purchasers by the Complainant for unlawful gain misusing the Provision of Negotiable Instruments Act. Therefore, the learned trial Judge, learned Judicial Magistrate – VI, Salem had accepted the arguments put forth by the learned Counsel for the Accused, in the light of Ex.D-1 and Ex.D-2 and in the light of evidence in cross-examination.

17. The arguments of the learned Counsel for the Appellant cannot at all be considered in the light of the original records wherein the proceedings under 313 Cr.P.C., had been recorded wherein the Accused

had only denied the incriminating evidence stating that he had marked Ex.D-1 and Ex.D-2 as proof of his defence.

18. There are reported rulings that for discharging the burden of proof rebuttal evidence by the Accused, it need not be the Accused himself/herself let in evidence, if they are sufficient, if they are probablised, the defence of the Accused through marking documents or elicit answers in their favour in the cross-examination of the Prosecution Witnesses. Here, in this case, the Accused had on the basis of the documents relied by the Complainant suggested in cross-examination, the defence of the Accused which was accepted by the Complainant in the cross-examination. To the specific averments that the Accused had sent money in the account of wife of the Complainant, the Complainant admits invariably they had sent it in piecemeal and he does not know the entire amount available from the amount sent by the Accused. To the specific question, whether the Complainant has given clearly the details of the payments made by the Accused and the details of payment settled to Sundaram Finance, he had claimed ignorance thereby evading direct answers. The learned Judicial Magistrate had arrived at a conclusion that

the Complainant has not approached the Court with clean hands, thereby dismissed the Complaint and acquitted the Accused. From what is available in the materials through the evidence of P.W-1 in cross-examination particularly Ex.D-1 and Ex.D-2, Ex.P-6 and Ex.P-7, it can be safely concluded that instead of claiming bonafide amount from the Accused misusing the Provision of Negotiable Instruments Act. The Complainant admitted to provide unlawful gain by misusing the Provision of presumption under Section 138 of Negotiable Instruments Act. To satisfy his greed, he had filled up the blank cheque issued with bonafide belief by the Accused in the light of the written agreement entered into between the partners/purchasers of the vehicle and the seller/Complainant. Therefore, the claim of legally enforceable debt is found to be fictitious in this case. The presumption under Section 138 of Negotiable Instruments Act will not come to the rescue of the Complainant. The argument of the learned Counsel for the Appellant/Complainant that the Accused had not entered the witness box, the answers given by the Accused under Section 313 Cr.P.C., was taken it for granted by the learned trial Judge dismissing the Complaint is found not true in the light of the original records and the proceedings under

Section 313 Cr.P.C. Based on the cross-examination and the argument of the learned Counsel for the Accused before the trial Court, the learned trial Judge had arrived at a conclusion by proper appreciation of evidence as per the Indian Evidence Act and as per the Provision of Section 138 of Negotiable Instruments Act. Hence, the Judgment of the learned Judicial Magistrate – VI dismissing the complaint in C.C.No.164/2012 cannot be considered as perverse. It is a proper and well-reasoned Judgment and the same is confirmed.

19. The point for consideration is answered in favour of the Respondent and against the Appellant.

In the result, this **Criminal Appeal is dismissed** as having no merits.

21.12.2023

dh
Index: Yes/No
Internet:Yes/No
Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate No.6,
   Salem.

2. The Public Prosecutor,
   High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
Crl.A.No.231 of 2015

21.12.2023