IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2023

PRONOUNCED ON : 24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

<u>Crl.A.No.703 of 2022</u>

Prof. Mohanraj ... Appellant

Vs.

A.Balakumar ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C. to call for the entire records connected with the judgment passed in C.C.No.492 of 2016 on 30.08.2018 by the learned Metropolitan Magistrate, Fast Track Court III at Saidapet and set aside the same.

For Appellant : Mr. S. Sathia Chandran

For Respondent : Mr. V.Shanmuganathan,

O R D E R

Challenging the acquittal order passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet in C.C.No.492 of 2016, dated 30.08.2018, which was confirmed by the Additional Sessions Judge,XVIII Additional City Civil Court, Chennai in Crl.A.No.611 of 2018, the present Criminal Appeal has been filed.

2. The fact of the case is that during the year 2011, the accused has received the sale consideration of Rs.2,50,000/- from the complainant on the promise of making arrangements to the complainant to purchase a house plot in Ambedkar Nagar, Pallikaranai. Out of the said sum, the complainant paid a sum of Rs.2,10,000/- to the accused by way of cash and the remaining sum of Rs.40,000/- by crediting to his account. In the middle of 2013, the copies of the documents were furnished by the accused. When the complainant's lawyer scrutinized, he found that the documents are not genuine and unreliable to complete the transaction. Hence, the complainant

asked the accused to return the entire amount of Rs.2,50,000/-. Inspite of repeated demands, the accused failed to repay the said amount and thereafter, he issued a cheque bearing No.000130, dated 10.06.2014 drawn on Bank of India, Kolathur Branch for a sum of Rs.2,00,000/-. On 18.06.2014, when the cheque was presented for collection in the Punjab National Bank, R.H.Road, Chennai, it was returned as insufficient funds. Thereafter, at request of the accused, on 26.07.2014, the complainant again presented the cheque for encashment and it was once again dishonoured due to insufficient funds with a memo dated 28.07.2014. Hence, the complainant issued a legal notice dated 09.08.2014 and the same was received by the accused on 11.08.2014. Even after receipt of the notice, he failed to repay the amount. Hence, the complaint.

3. After recording the sworn statement of the complainant and after perusal of the documents, the Trial Court taken cognizance of the offence under section 138 of N.I.Act and on questioning, the accused denied the same as false. In order to prove the case of appellant/complainant, he examined himself as P.W.1 and Ex.P.1 to Ex.P.5 has been marked.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he did not choose to examine any witness nor mark any documents.

5. Having considered all the materials, the Trial Court acquitted the accused from the offence under Section 138 of N.I.Act. Challenging the same, he preferred an appeal before the lower Appellate Court, which was also dismissed by confirming the judgment of the Trial Court. Aggrieved over the same, the complainant is before this Court with this appeal.

6. The learned counsel for the appellant/complainant contended that the Trial Court failed to appreciate the evidence of the appellant. The conclusion arrived by the Trial Court is unsustainable in law. In the year 2011, the complainant has paid a sum of Rs.2,50,000/- to the respondent/accused for arranging to purchase the plot in Ambedkar Nagar, Pallikaranai. But, only in the middle of 2013, the complainant came to know that the documents with regard to the said plot was not genuine.

Hence, the sale transaction was not completed and asked the accused to return the entire amount of Rs.2,50,000/. After several demands, the accused gave the cheque in question bearing No.000130 , dated 10.06.2014 drawn on Bank of India, Kolathur Branch for a sum of Rs.2 lakhs. When the cheque was presented for encashment, it was dishonoured due to insufficient funds in his account. Even after issuance of the legal notice, the accused failed to pay the cheque amount and hence, she lodged a complaint. Though the accused has not produced any evidence to prove his case, the Trial Court acquitted the accused on the ground that the accused gave the cheque after the period of 3 years and 7 months of the transaction between the complainant and the accused. Since the alleged debt was not legally enforceable at the time of issuance of cheque, in the absence of any valid acknowledgment of previous debt as contemplated under Section 25(3) the Indian Contract Act, the accused has not committed any offence under Section 138 of N.I.Act.

7. He further contended that the finding is contrary to the fact as well as Law. Further, the learned Trial Judge relied on a judgment of the Kerala High Court in the case of Sasseriyil Joseph /vs/ Devassia (2000 KLT (3) 533), but the said decision was overruled by a Division Bench of Kerala High Court in the case of K.K.Ramakrishnan /vs/ K.K.Parthasardhy (2003(2) KLT 613). In which, the Division Bench of the Kerala High Court held that the view taken in Joseph's case cannot be sustained as laying down the correct principle of law and thus, overruled. Further, the complainant is entitled to draw the presumption under Section 118 and 139 of N.I.Act. The accused did not dispute the issuance of cheque and also the signature. He has also failed to rebut the presumption in favour of the complainant under Section 139 of N.I.Act and the liability is not barred by the limitation and thus, pleaded to allow the appeal.

8. To support his argument, the learned counsel placed the following judgments :-

(i) KLT 2003 (2) 613 (K.K.Ramakrishnan /vs. K.K.Parthasarathy)

(ii) CRM-M-39414-2021, Punjab and Hariyana High Court
(Sultan singh /vs. Tej Pratap)

(iii) Crl.A.No.2933 to 2934 of 2007, Bombay High Court,
(Dinesh B Chokshi /vs/ Rahul Vasudeo Bhatt and anr.,)

(iv) Crl.A.No.1760-1761 of 2022, Hon'ble Supreme Court
(Yogesh Jain /vs. Sumesh Chadha)

9. The learned counsel appearing for the respondent supported the judgment of the Trial Court as well as the lower Appellate Court and contended that the cheque in question (Ex.P.1), dated 10.06.2014 has been issued after the expiry of 3 years from the date of the alleged debt. Therefore, the debt in this case was not legally enforceable debt when the cheque was issued. The time barred debt is not an enforceable debt as stated in Section 138 of N.I.Act. The Trial Court as well as the lower Appellate Court rightly dismissed the complaint as no offence was committed by the accused under Section 138 of N.I.Act and no ground to interfere with the finding of the Trial Court as well as the lower Appellate Court and thus, pleaded to dismiss the appeal.

10. To support his argument, the learned counsel placed the following judgments :

(i) ***Crl.A.No.1223 to 1226 of 2001, Madurai Bench of this Court (Kamachi & others /vs/ M/s.Arkaa Medicament & anr)***

(ii) Crl.R.C.No.492 of 2014, Madras High Court (M.Danabal /vs. R.Senthilrajan)

(iii)A.Nos.4088, 750 of2017 in C.S.No.75 of 2017, Crl.O.P.No.27379 of 2016, Crl.M.P.Nos.13939, 13940 of 2016 and 15581 of 2017 (M.P.Farook /vs. K.Sasikumar)

11. I have considered the submission made by the learned counsel for the parties and also perused the materials available on records carefully.

12. The material on records reveal that the appellant/complainant testified before the Trial Court that in the year 2011, he had approached the accused for purchase of a housing plot in Ambedkar Nagar, Pallikaranai.

The accused agreed to make arrangements for purchasing the plot for a total sale consideration of Rs.2,50,000/- . In the month of October 2011, he paid a sum of Rs.2,10,000/- in cash and subsequently, paid the remaining sum of Rs.40,000/- to the credit of the accused account. In the middle of 2013, the accused furnished copies of documents with regard to the plot. While scrutinizing with the help of lawyer, the complainant found that it was bogus and unreliable to complete the transaction. Hence, he insisted for repayment of Rs.2,50,000/- from the accused. The accused gave a cheque bearing No.000130, dated 10.06.2014 for a sum of Rs.2,00,000/- drawn on Bank of India, Kolathur Branch (Ex.P.1), which was dishonoured for "insufficient funds". It seems that the transactions are continued from the year 2011 till the middle of 2013 with regard to the purchase of housing plot in Ambedkar Nagar Pallimaranai. It seems to be not barred by limitation of debt because in the year 2011, the amount has been paid. Only in the middle of 2013, copies of documents relating to the plot was given by the accused and found it was bogus and unreliable to complete the transaction. Therefore, within a period of 3 years, i.e. from the year 2013, the cheque in question was given on 10.06.2014. Therefore, the transaction and repayment is not barred by limitation.

13. Further the Negotiable Instruments Act raised two presumption in favour of the drawee one contains in Section 118 of the Act and another in Section 139 of N.I.Act.

Section 118 reads as follows :

"118: Presumptions as to negotiable instruments - untill the contrary is proved, the following presumptions shall be made :-

(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration' ;

(b) as to date - that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer - that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements - that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp - that a lost promissory note, bill of exchange or cheque was duly stamped ; "

Section 139 of the Act reads as follows:

139. *Presumption in favour of holder - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability"*

14. The principle stated by the Hon'ble Supreme Court in ***Goaplast (P) Ltd /vs. Chico Ursula D' Souza and another (2003 Crl. L.J. 1723) ,*** wherein this Court opined :

" 6. *The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut* *the presumption. This presumption coupled with the object of Chapter XVII of the Act which is to promote the efficacy of banking operation and to ensure credibility in business transactions post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts, which in other words can be said to be taking advantage of one's own wrong. If we hold otherwise, by giving instructions to banks to stop payment of a cheque afterissuing the same against a debt or liability, a drawer will easily avoid penal consequences under Section 138. Once a cheque is issued by a drawer, a presumption under Section 139 must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138 of the Act by the drawee or the holder of the cheque in due course. This was the view taken by this Court in Modi Cements Ltd. /vs. Kuchil Kumar Nandi 2. On the same facts is the decision of this Court in Ashok Yeshwant Badave /vs/. Surendra Madhavrao Nighojakar. The decision in Modi case overruled an earlier* *decision of this Court in Electronics Trade & Technology Development Corporation Ltd. /vs/ Indian Technologists & Engineers(Electronics) (P) Ltd. which had taken a contrary view. We are in respectful agreement with the view taken in Modi case. The said view is in consonance with the object of the legislation. On the faith of payment by way of a post-dated cheque, the payee alters his position by accepting the cheque. If stoppage of payment before the due date of the cheque is allowed to take the transaction out of the purview of Section 138 of the Act, it will shake the confidence which a cheque is otherwise intended to inspire regarding payment being available on the due date."*

15. No exception to the aforementioned legal principle can be taken. In this case, the accused did not lead any evidence and failed to rebut the presumption in favour of the complainant. Therefore, the drawer become guilt of the offence. The Trial Court and the Lower Appellate Court, finding being perverse on fact and therefore, it is liable to be set-aside. For the above said reasons, the respondent/accused is found guilty for the offence under Section 138 of the Negotiable Instruments Act.

16. All the judgments relied on by the learned counsel for the parties are with relevant to time barred debt. But, in this case, on fact it is not barred by limitation. Hence, the judgments are not relevant to decide the case on hand.

17. Accordingly, this Criminal Appeal is allowed and the judgments passed by the Trial Court as well as the lower Appellate Court are set-aside and the accused is found guilty for the offence under Section 138 of N.I.Act and sentenced to undergo simple imprisonment for six(6) months with a fine of Rs.4,00,000/- (double the amount of cheque), in default to under go three(3) months simple imprisonment. The fine amount is ordered to give to the complainant as compensation under Section 357(3) Cr.P.C. The Trial Court is directed to issue warrant and execute the sentence imposed by this Court on the respondent.

24.02.2023

mrp

To

1. The Metropolitan Magistrate,
   Fast Track Court-III, Saidapet

2. The Additional Sessions Judge,
   XVIII Additional City Civil Court,
   Chennai,

V.SIVAGNANAM, J.,

mrp

Pre-delivery order in

Crl.A.No.703 of 2022

24.02.2023