



Crl.A.(MD)No.177 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.09.2023

Delivered On : .09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. A.(MD)No.177 of 2017

A.N.Jegadeesan

.. Appellant

Vs.

S.Manikandan

.. Respondent

Prayer : This Criminal Appeal is filed under Sections 378(2) of Cr.P.C., to call for the records pertaining to the case in C.A.No.50 of 2016 on the file of the VI Additional District & Sessions Court, Madurai by judgment dated 15.02.2017 and set aside the same.

For Appellant	: Ms.I.Saliyakhan
For Respondent	: Ms.S.Prabha
	For Mr.D.Ramesh Kumar

JUDGMENT

This appeal has been filed by the appellant to set aside the judgment of acquittal passed in C.A.No.50 of 2016 dated 15.02.2017, on the file of the VI Additional District and Sessions Judge, Madurai by reversing the judgment and conviction passed in S.T.C.No.648 of 2013 dated 07.06.2016 on the file of the



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Judicial Magistrate No.I, Fast Track Court, Madurai wherein the trial Court convicted the appellant for the offence under Section 138 r/w. 142 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.5,60,000/-. Aggrieved by the said judgment and conviction, the respondent herein preferred an appeal in Crl.A.No.50 of 2016 before the VI Additional District and Sessions Court, Madurai and the Additional District and Sessions Court reversed the judgment and conviction passed in S.T.C.No.648 of 2013, by allowing the appeal and acquitted the accused by a judgment dated 15.02.2017. Against which, the appellant has preferred this present Criminal Appeal.

2.The case of the appellant is that the appellant is running a readymade cloth business under the name and style of Sreekamadenu Textiles. The accused used to purchased readymade clothes from the appellant upon credit and settled the bill amount as short term installments. The accused on 10.10.2009 and on 21.09.2010 received readymade garments worth Rs.4,15,760/- from the complainant under bill no.4 and received textiles worth Rs.1,48,990/- from the complainant under bill no.22. Upon demand, the accused issued cheque for Rs.1,15,000/- on 18.08.2011 and issued second cheque for Rs.1,15,000/- on 25.08.2011 and issued third cheque for Rs. 1,15,000/- on 29.08.2011 and issued 4th cheque for Rs.2,15,000/- on 17.09.2011 drawn of ICICI Bank, Pondicherry for a total amount of above Rs.5,60,000/-. When



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the above cheques were presented for collection on 11.11.2011, the above said cheques were returned as 'account closed' on 24.11.2011 and the same was received from the bank on 28.11.2011. Notice was issued by the appellant on 23.11.2011 and the same was received by the accused on 26.12.2011. Thereafter, the respondent neither repaid amount nor issued reply. Thereby, the complainant filed a private complaint under Section 138 of Negotiable Instruments Act. The trial Court has taken cognizance for the offence under Sections 138 of Negotiable Instruments Act and issued summons and on summons, the respondent/accused appeared before the trial Court. The trial Court framed charges for the offences under Section 138 of Negotiable Instruments Act. After framing charges, the charges were read over and explained to the accused but the accused denied the charges.

3.The appellant had examined P.W.1 and P.W.2 and marked Exs.P.1 to P.14 and on the side of the accused, no one was examined and marked Exs.D.1 to D.5. After examination of witness, the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.

4.Upon perusing the oral and documentary evidence, the trial Court found the respondent guilty for the offence punishable under Section 138 r/w. 142 of



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Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.5,60,000/- by a judgment, dated 07.06.2016. Aggrieved by the said conviction and judgment, the appellant filed a criminal appeal in C.A.No.50 of 2016 before the VI Additional District and Sessions Court, Madurai. The appellate Court reversed the judgment and conviction and allowed the appeal through its judgment dated 15.02.2017.

5. Aggrieved by the said judgment, this revision case has been filed on the following grounds:-

The judgment of the appellate Court is against law and illegal and is therefore liable to be set aside. The first appellate Court ought to have convicted the accused/respondent herein since the accused admitted the signature in the cheque I.e. Ex.P3 to Ex.P6. The judgment of the appellate Court is based on merely assumption and not on evidence on record. The appellate Court ought to have convicted the respondent/accused herein by using statutory presumption contained under Section 139 of Negotiable Instruments Act and also the defence taken by the respondent/accused is not established by producing evidence and documents. The appellate Court ought to have held that the business transaction in between the respondent/accused and one Ramesh broker is introduced the complainant to the respondent/accused after that the complainant has sent a material to the



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respondent/accused concern. The lower appellate Court not appreciated the business transaction between the complainant and the respondent/accused.

6.The learned counsel appearing for the appellant would contend that the appellant herein filed a cheque case against the respondent herein. There was a business transaction between the complainant and the accused and thereby, there was a due for the garments purchased by the accused from the shop of complainant and thereby, the accused issued four cheques for a sum of Rs.5,60,000/- and then when the cheques were presented for collection, the same were returned as 'account closed'. Thereafter, the complainant issued notice to the accused but the same was received by him but not replied the same. Thereafter, the complainant filed complaint under Section 138 of Negotiable Instruments Act before the trial Court and examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P14 and on the side of the defence, the witnesses were examined and only marked Ex.D1 to Ex.D5. The trial Court after analyzing the evidences correctly convicted the accused, bu the appellate Court wrongly acquitted the accused by holding that already first time the cheques were presented for collection and the cheque were returned as account closed. But without issuing notice to the accused, once again presented the cheque for collection second time and then issued notice, thereby allowed the appeal and acquitted the accused. There is no bar for prosecution of cheque for collection for second time, but the



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appellate Court without considering the same wrongly acquitted the accused instead of dismissing the appeal. Hence, the judgment of appellate Court is liable to be dismissed.

7.The learned counsel appearing for the respondent contended that there is no cause of action for the complainant and the cheques were presented for collection on 24.08.2011, 27.08.2011, 29.08.2011 and 20.09.2011 and the same were returned as 'account closed' but the complaint was not issued notice immediately within the statutory period. Per contra once again presented for collection and the same was also returned for the same reasons and then issued notice. Once the complaint came to know about the closure of account, he ought to have issued notice and failed to do so, but again presented for the cheques. Thereby there is no cause of action for the complaint and the complaint is not in accordance with law. The trial Court failed to consider this aspect and erroneously convicted the accused. The appellate Court after analyzing all the aspects, correctly allowed the appeal and acquitted the accused. Therefore, this appeal is liable to be dismissed.

8.Upon hearing both sides and perusing the records and grounds, the points for determination in this appeal is whether the complainant has proved the charges against the respondent under Section 138 r/w. 142 of Negotiable Instruments



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Act in accordance with law and the judgment and conviction passed by the trial

Court are sustainable or not.

Point:-

9.The case of the complainant is that the respondent/accused is running a readymade garments business and he purchased garments from the appellant's shop. The respondent/accused on 10.10.2009 and on 21.09.2010 purchased readymade garments worth Rs.4,15,760/- from the appellant under bill no.4 and received textiles worth Rs.1,48,990/- from the appellant under bill no.22. Upon demand, the respondent issued cheque for Rs.1,15,000/- on 18.08.2011 and issued second cheque for Rs.1,15,000/- on 25.08.2011 and issued third cheque for Rs.1,15,000/- on 29.08.2011 and issued 4th cheque for Rs.2,15,000/- on 17.09.2011 drawn on ICICI bank, Pondicherry Branch for a total amount of Rs.5,60,000/-. When the cheques presented for collection on 11.11.2011, the above said cheques were returned as 'account closed' on 24.11.2011 and the same was received from the bank on 28.11.2011. Thereafter, notice was issued by the appellant on 23.12.2011 and the same was received by the accused on 26.12.2011. After receipt of notice, the respondent neither repaid amount nor issued reply.

10.In order to prove the case on the side of the complainant, P.W.1 and



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P.W.2 were examined and marked Exs.P1 to P14 and on the side of the accused,

Ex.D1 to D5 were marked. P.W.1 in his evidence stated about the purchase of garments and issuance of cheque and presentation for collection and return of cheque. The respondent contention is that already cheques were presented for collection and returned as account closed, but no notice was issued as per Section 138 and thereby, no cause of action arose and no offence would be made out against the accused. In this context, the P.W.1 in his cross examination admitted that already cheque was presented for collection on 24.08.2011, 27.08.2011, 29.08.2011 and 20.09.2011 and the same was returned as 'account closed'. The aforesaid factum was also reveals that in the back side of the cheque, the seal was affixed as stated above. Therefore, it is clear that after presentation of the cheque in the first time, the appellant/complainant came to know about the closure of the account but the P.W.1 again presented the cheque for collection, on 11.11.2011. Once the appellant/complainant having knowledge about the closure of account, he ought to have issued notice immediately after return of the cheque within the limitation period. Here once again the cheques were presented for collection, thereafter the appellant issued notice. The first date of return is 24.08.2011 and other three dates. The earlier presentation of cheques were suppressed by the appellant/complainant and further cause of action would arise on the first return of the cheque. As per Section 138(b) notice has to be issued within one month and after receipt of notice,



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the accused has to settle the amount within 15 days as per Section 138(c). But in this case, first return was 24.08.2011, 27.08.2011, 29.08.2011 and 20.09.2011 respectively and the limitation period of issue notice is one month but no notice was issued. But the complaint once again presented the cheque on 11.11.2011 and the same was returned as account closed.

11. The learned counsel appearing for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of ***APS Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers and others*** reported in ***2020 (1) MWN (Cr.) DCC 105 (SC)***, wherein this Hon'ble Supreme Court in para no.7 held as follows:-

“7. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under [Section 139](#) of the N.I. Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more



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particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per [Section 139](#) of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under [Section 139](#) of N.I. Act. As observed above, [Section 139](#) of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence. “

12.The learned counsel appearing for the appellant relied upon the decision of this Court in the case of **K.Nagaraj v. R.Saravanan** reported in **2022 (1) TNLR 1 (MAD) (MB)**, wherein this Court in para no.24 held as follows:-

“24.The said evidence given by the accused was strongly denied on the side of the complainant. In the said circumstances, it is necessary to show whether the said evidence given by the accused is probable and the same is true one. In this respect, while at the time of giving evidence as D.W.1, in his cross~examination D.W.1 deposed that he is having accounts in respect of getting and giving orders. Further, he gave evidence as he did not know on what date J.J.M. Company,



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Chennai, had rejected the order, which has already been issued to him. He has clearly stated that the document related to the accounts and the rejection orders have not been produced before the trial Court. Therefore, the said evidence given by D.W.1 appears that without producing the relevant documents, he had given evidence as, he only incurred a loss due to delay in delivery of goods by the complainant. At this juncture, it is necessary to see the judgment of our Hon-ble Apex Court in the case of T.P.Murugan (Dead) Through Legal Representatives vs. Bojan reported in 2018 (8) SCC 469, wherein our Hon-ble Apex Court has held as, rebuttable presumption must be by adducing credible evidence. Therefore, only in the circumstance, after seeing the accounts maintained by the accused and after seeing the rejection orders given by J.J.M. Company, Chennai, this Court comes to the conclusion that due to belated delivery of the goods, the accused alone incurred loss and therefore, the cheques issued by him are not for discharging his liability.”

13.The learned counsel appearing for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of ***D.K.Chandel v. Wockhardt Ltd. and another*** reported in ***2020 (1) MWN (Cr.) DCC 73 (SC)***, wherein this Hon'ble Supreme Court in para no.8 held as follows:-

“(8) As held by the Trial Court as well as by the High Court that the cheque was issued towards the amount due and payable by the appellant for purchase of pesticides. As rightly observed by the High Court production of the account books/cash book may be relevant in the



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*civil court; but may not be so in the criminal case filed under **Section 138** of the N.I.Act. This is because of the presumption raised in favour of the holder of the cheque. In view of the concurrent findings recorded by the Trial Court as well as by the High Court we do not see any ground warranting interference with the conviction of the appellant under **Section 138** of the N.I.Act. (9) So far as the question of sentence is concerned, the cheque was issued by the appellant, for discharge of the debt, way back in the year 1999. Considering the fact that the cheque was issued in the year 1999 and having regard to the other facts and circumstances of the case and in the interest of justice we deem it appropriate to modify the sentence of imprisonment imposed upon the appellant and also the fine amount of Rs.4,17,148/- “*

14.On careful reading of the aforesaid judgments, it is clear that there is no bar to take cognizance in second time presentation of the cheques but in the case on hand, the account was closed and the same was came to the knowledge of the complainant on the previous return of the cheque. But once again he presented the cheque for closed account after knowing that it was closed. Hence, this case law will not be applicable for the present facts of the case.

15.The complainant failed to issue notice within limitation period for the first presentation of the cheque and the limitation to issue notice would start after return of cheque at first time since account was closed. There is no cause of action



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for the case. The trial Court failed to consider the same and the appellate Court has clearly discussed about the second presentation of the cheque, the cheque presented for collection twice and when the account was closed and the same was came to knowledge of the appellant/complainant on the return of cheque by first collection and how the cheques were once again presented has to be explained by the appellant/complainant. But the appellant failed to do so. Therefore, the appellate Court has correctly acquitted the accused and there is no infirmity found in the judgment of the appellate Court and thereby, this Court has no warrant to interfere with the judgment of the appellate Court and this appeal has no merits and deserves to be dismissed.

16.In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the VI Additional District & Sessions Court, Madurai in Crl.A.No.50 of 2016 on 15.02.2017, in reversing the judgment and conviction passed by the learned Judicial Magistrate No.I, Madurai, in S.T.C.No.648 of 2013 on 07.06.2016 is confirmed. The bail bond if any executed by the appellant shall stand cancelled. Consequently connected miscellaneous petition is closed.

.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn



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P.DHANABAL, J.

Mrn

To

- 1.The VI Additional District and Sessions Judge, Madurai.
- 2.The Judicial Magistrate No.I, Fast Track Court, Madurai.

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