IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS. 110 OF 2021 & 683 OF 2022

C.A. NO. 110 OF 2021

B.S. Shah .. Appellant

- Vs -

1. M/s. J.V.H. Met-Cut (P) Ltd.
No.4, Pycrofts Garden Road
Chennai 600 006.

2. Harinath .. Respondents

C.A. NO. 683 OF 2022

Jvh Met-Cut Pvt. Ltd.
Mullrosapuram, Maraimalai Nagar
Chengalpet Taluk
Rep. By J.V.Harinath
Managing Director .. Appellant

- Vs -

B.S.Shah .. Respondent

C.A. No.110 of 2021 filed u/s 378 Cr.P.C. praying to set aside the judgment dated 31.12.2019 passed by the Court of IX Metropolitan Magistrate, Saidapet, Chennai in C.C. No.7211 of 0202 and convict the respondents/accused.

C.A. No.683 of 2022 filed u/s 378 Cr.P.C. praying this Court to set aside the judgment dated 31.12.2019 in C.C. No.7140 of 2004 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and convict the respondent/accused for the offences u/s 465, 467, 471 and 420 IPC.

For Appellant	:	Mr. Prakash Goklaney for M/s. S.Giritharan in CA 110/2021 Ms. AL. Gandhimathi, SC, for Mr. L.Palanimuthu in CA 683/2021
For Respondents	:	Mr. Prakash Goklaney for M/s. S.Giritharan in CA 683/2021 Ms. AL. Gandhimathi, SC, for Mr. L.Palanimuthu in CA 110/2021

COMMON JUDGMENT

While C.A. No.110/2021 has been filed by the appellant challenging the order of acquittal passed against the respondents by the trial court in a case relating to dishonor of cheque u/s 138 of the Negotiable Instruments Act (for short 'the Act'), C.A. No.683/2022 has been filed by the appellant against the order of acquittal of the respondent in a case of forgery and creation of false documents for the purpose of cheating the appellant. As both the matters are case and case-in-counter, they are taken up together for disposal and disposed of by this common judgment.

2. **For the sake of convenience, the parties will be referred to in the order as they are are arrayed in C.A. No.110/2021.**

CASE IN C.A. NO.110/2021

3. It is the case of the appellant that he is a dealer in heavy industrial machinery and cutting equipments and the respondent is a manufacturer of metal cutting tools. The appellant was a dealer under the respondent and in the course of business transactions, the respondent was due and owing a sum of Rs.19,12,632.62 to the appellant. In view of the severe financial crunch faced by the appellant, the respondent agreed to pay a sum of Rs.9,00,000/- towards full and final settlement of the sum due and the respondent, to show

its bona fide, issued a duly signed cheque to the appellant bearing No.145368 drawn on State Bank of India, Guindy Branch with clear instructions that if the sum stood unpaid till 25.6.2022, the appellant may present the same for collection. Accordingly, the appellant waited till 27.7.2002 and, thereafter, filled up the cheque and presented the same, as per the instructions of the respondent, with information to the respondent, however, the respondent prayed for some more time and inspite of grant of additional time, as the respondent did not pay the same till 5.9.2022, the appellant presented the cheque for collection with his bankers, which cheque was returned dishonoured with endorsement “Exceeds Arrangement” vide memo dated 5.9.2002, which was intimated on 6.9.2002. Though the appellant contacted the respondent and stressed upon him to pay the amount, however, the respondent refused to make the payment and instead by letter dated 7.9.2002, the respondent hurled accusations against the appellant. Therefore, the appellant issued a notice dated 13.9.2002 to the respondent calling upon him to pay the cheque amount which was received by the respondent on 16.9.2002 to which the respondent sent reply notice on

27.9.2002. Since the amount was not paid inspite of service of notice, the appellant filed a private complaint u/s 200 Cr.P.C.

4. Upon receipt of the complaint and examining the petitioner u/s 200 Cr.P.C., as there existed a *prima facie* case for proceeding against the respondent, the court below took cognizance of the complaint and issued summons to the respondent for appearance. To substantiate the case, the petitioner examined himself as P.W.1 and the Field Officer of the State Bank of India, Guindy Branch as P.W.2 and marked Exs.P-1 to P-23. On the side of the respondent, the respondent examined himself as D.W.1 and marked Exs.D-1 to D-4. On consideration of the oral and documentary evidence, the trial court acquitted the respondent aggrieved by which the present appeal has been filed.

<u>CASE IN C.A. NO.683/2022</u>

5. It is the case of the respondent that it is in the manufacturing of machine cutting tools and the appellant was appointed as dealer, who, in turn, appointed his co-brothers as agents. The contract for dealership had

specific terms, but as the appellant failed to meet the agreed terms resulting in huge financial loss to the respondent. Thereafter, the respondent sought the appellant to pay the amount and inspite of strenuous efforts, the appellant did not pay the amount. However, the appellant introduced one Gautam Chand to the respondent, who loaned a sum of Rs.2 Lakhs to the accused of which a sum of Rs.1,91,000/- was paid to the respondent by retaining a sum of Rs.9,000/- towards interest. It is the further case of the respondent that as the accused stood as guarantor for the loan, the respondent was made to issue cheque bearing No.145368 as security which was issued in blank containing only the signature with the understanding that upon repayment of the loan, the cheque would be returned to the respondent. It is the further case of the respondent that the cheque bearing No.145368 dated 27.07.2002 pertains to cheque book No.145351, containing 25 leaves, which was utilised by the respondent from February, 2001 to March, 2001 and from March 2001, the respondent had issued 709 cheques. However, the notice of the appellant dated 13.09.2002 mentions that this cheque was given during June, 2002, while the said cheque book pertained to the period February, 2001 to March, 2001, which clearly shows that the dishonoured cheque was not issued for discharging any legally enforceable debt.

6. it is the further case of the respondent that a detailed reply in this regard was given by the respondent to the appellant for his notice dated 13.09.2002 and, thereafter, the respondent terminated the dealership of the appellant and sought the cooperation of the appellant for reconciliation and settlement of the accounts for which the appellant did not cooperate. It is the further stand of the respondent that due to the hostile attitude of the appellant, the respondent closed the loan directly with the said Gautam Chand, but the appellant had fraudulently used the cheque bearing No.145368 under the guise of the cheque being given towards the settlement of the amount in connection with the business transaction and the appellant, by his act, has intentionally committed the act of forgery, making a false document, which have been done for the purpose of cheating and harming the reputation of the respondent and, therefore, a complaint was lodged against the appellant before the Judicial Magistrate No.2, Chengalpet on

18.06.2003, which was forwarded and upon receipt of the report, the same culminated in taking cognizance of the report in C.C. No.7140/2004.

7. On the side of the respondent, the respondent examined himself as P.W.1 and marked Exs.P-1 to P10. On the side of the appellant, the appellant examined himself as D.W.1 and marked Exs.D-1 to D10. On consideration of the oral and documentary the trial court acquitted the appellant aggrieved by which the present appeal has been filed.

8. Learned counsel appearing for the appellant submits that though it is the admitted case of the respondent that the dishonoured cheque was given by the respondent as security for the borrowals made from Gowtham Chand, who was introduced by the appellant, however, there is no material evidencing the payment made to Gowtham Chand and in the absence of the same, presentation of the cheque and the subsequent dishonor would be referable only to a legally enforceable debt. However, this fact has been lost sight of by the trial court.

9. It is the further submission of the learned counsel that the liability of the respondent to the appellant stood admitted through Ex.P-3, wherein the respondent had admitted his liability to the tune of Rs.9 Lakhs as a settlement. When the liability is admitted and cheque issued covering part of the liability, the dishonor would squarely fall within the contours of legally enforceable debt and the same would attract the provisions of Section 138 of the Negotiable Instruments Act.

10. It is the further submission of the learned counsel that P.W.1, the power of attorney holder was very much within the knowledge of each and every act and had deposed on all aspects of the complaint and the decisions of the Supreme Court in this regard are in favour of the appellant. Further, the power of attorney is none other than the son of the appellant and, therefore, was very much aware of all the acts. However, erroneously the trial court has erred in stating that the power of attorney holder was not having full knowledge and, therefore, the said evidence cannot be the basis to hold against the respondent.

11. It is the further submission of the learned counsel that the trial court erred in holding that the respondent has rebutted the presumption u/s 139 of the Negotiable Instruments Act and the findings are based on surmises and conjectures.

12. It is the further submission of the learned counsel that though the respondent claimed that the cheque was issued towards security for repayment of Rs.1,91,000/- to one Gowtham Chand, however, the respondent being a limited company, could have very well tabled statement of accounts or could have demanded return of the subject cheque. However, the defence of the respondent that the cheque was issued by their bankers in the year 2001 and, therefore, could not have been issued in the year 2001, however, forgetting the fact that the transaction with Gowtham Chand was in the year 2000.

13. In fine, it is submitted that the findings of the trial are perverse and arbitrary without adherence to the materials placed before it and are

against the decisions of the Apex Court and, accordingly, prayed for setting aside the said order and convicting the respondent.

14. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

i) *Shree Daneshwari Traders – Vs – Sanjay Jain & Anr. (2019 (16) SCC 83);*

ii) *Uttam Ram – Vs – Devinder Singh Hudan & Anr. (2019 (1) SCC 287);*

iii) *A.C.Narayanan & Anr. – Vs – State of Maharashtra & Ors. (2014 (11) SCC 790); and*

iv) *K.N.Kittusamy – Vs – A.P.Shubbramaniam & Anr. (Crl. A. No.399 of 2015 – Dated 27.06.2019)*

15. Per contra, learned senior counsel for the respondent submitted that though the trial court had relied on Ex.P-3, the three cheques, which were issued by the respondent to the appellant towards the discharge of the sum of Rs.9 Lakhs, which clearly prove that there were monetary transactions between the respondent and the appellant and that the respondent has clearly rebutted the presumption u/s 139 of the NI Act, there is no liability and, therefore, the cheque, which is the subject matter of the other appeal,

has been given only for security purposes, which has been fraudulently used by the appellant, by filling up the same, which is nothing but an act of forgery and creating false documents. Once the said fact has been established by the respondent, the trial court ought to have convicted the appellant, however, erroneously has acquitted the appellant, which is unsustainable.

16. It is the further submission of the learned senior counsel that the loan received by the respondent from Gowtham Chand had been cleared and that the subject cheque was given only as a security for the said loan. The misuse of the said cheque by the appellant is clearly an act of forgery and creating false documents for the purpose of wreaking vengeance against the respondent for which the appellant should be convicted. Therefore, she submitted that this Court may overturn the acquittal and convict the appellant for the offences aforesaid.

17. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the

materials available on record as also the decisions relied on by the learned counsel for the appellant.

18. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)***, the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

> *37. This Court in the case of **Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*
>
> *"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: **(Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]***
>
> > *"42. From the above decisions, in our considered view, the following general principles regarding*

powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) <u>An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence</u>

that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

38. Further, in the case of ***H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)*** *this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -*

"8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent *findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."*

(Emphasis Supplied)

19. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

20. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials

available on record or whether there are materials, which warrants grant of leave by this Court.

21. In the cases on hand, there is divergence in the provisions of law, as in CA No.110/2021, the same is based on Section 138 of the NI Act, while in CA No.683/2022, the same is based on the Indian Penal Code, more particularly, the offences u/s 465, 467, 468, 471 and 420 IPC.

22. To appreciate the facts in CA No.110/2021, Sections 138 and 139 of the Act, which are relevant for the consideration of the present issue, requires to be adverted to and the same is quoted hereunder :-

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account.***
>
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account*

by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice. to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

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."

23. The appellant is drawing inspiration from the presumption provided for u/s 139 of the Act to impress upon this Court that it is for the respondents to prove that the respective cheques, which are the subject matter of the present petitions/appeals were not issued towards the discharge of any debt or liability and in the absence of such proof, necessarily, the rigours of Section 138 of the Act would stand attracted.

24. A perusal of the materials available on record reveal that the appellant claims that the dishonour of the cheque is relatable to the debt incurred during the course of business transaction and as the respondent was due to pay a sum of Rs.19,12,632.62. It further transpires that upon scrutiny of the accounts, a settlement was arrived at between the appellant and respondent towards the amount to be paid and a sum of Rs.9 Lakhs was

arrived at to be amount, which the respondent would pay in full quit to the appellant.

25. It is further evidenced that towards settlement, the cheque bearing No.145368 was issued with specific instruction to the appellant to deposit the cheque if the amount remains unpaid till 25.6.2002. The appellant, it is alleged, waited till 27.7.2002 and as the respondent failed to pay the amount, the cheque was presented, which has since been dishonoured.

26. A perusal of the order passed by the trial court reveals that many transactions have been conducted between the appellant and the respondent, which clearly show that there is a business dealing between the appellant and the respondent.

27. In fact, it is the specific rebuttal of the respondent that the dealership with the appellant was not fruitful, which resulted in the cancellation of dealership and the security cheque, which was with the appellant had been misused by the appellant. It is the specific rebuttal of the

respondent that the cheque in issue was given as a security, moreso, in blank, which has been filled up by the appellant and presented to the bankers without the knowledge of the respondent. In fact, it is admitted by the appellant that the cheque was issued in blank, which was filled by the appellant.

28. Such being the admitted position, when there is no connecting material to show that the amount shown in the cheque is towards a legally enforceable debt, which is to be discharged by the respondent and in the absence of the reconciliation of accounts, which led to the settlement alleged settlement between the appellant and the respondent that Rs.9 Lakhs would be paid in full quit towards the amount due by the respondent, the claim of the appellant that there subsists a legally enforceable debt and towards the discharge of the same the cheque in issue was issued, has not been established and in the light of the rebuttal of the respondent with regard to the reason for the issuance of the cheque, without the appellant proving that there is a legally enforceable debt and that the cheque, which stood

dishonoured, was issued towards the discharge of the said legally enforceable debt, the acquittal recorded by the trial court cannot be found fault with.

29. Further, one other document, which leans very much in favour of the respondent towards his rebuttal evidence is Ex.P-3, the letter, which was addressed by the respondent to the appellant. The said letter speaks about the payment made by the respondent to the appellant on various dates to the tune of Rs.1.50 Lakhs and Rs.3.12 Lakhs and further also states that the respondent had paid Rs.1.08 Lakhs to financier Gautam from December, 2000 to 27.06.2002. Though the respondent had sought the response of the appellant on this, however, the appellant had remained silent and no reply was sent by the appellant, which fact has also been admitted by P.W.1 in his cross-examination. Further, if the claim of the appellant is to be accepted, then the necessity for the respondent to take three bankers cheque for a sum of Rs.9 Lakhs has not been explained by the appellant.

30. Further, P.W.1, who is the son as the power of attorney holder had deposed before the trial court. However, no specific reason had been

attributed for the power of attorney to depose on behalf of the appellant. Further, the complaint is bereft as to the knowledge of the power of attorney as to the knowledge about the transaction between the appellant and the respondent. However, this Court is not inclined to enter into the said realm for the reason that when the appellant has not established the subsistence of a legally enforceable debt, the dishonour of the cheque would not tantamount to an offence u/s 138 of the NI Act and in the said backdrop, the necessity for P.W.1 to be brought in as power of attorney of the appellant not having been explained properly, necessarily this Court has to draw an adverse inference against the appellant. Though decisions in support of the above have been placed before this Court, however, in the fact situation, the said decisions would have no relevance to the case on hand and, therefore, the same are not discussed. In the said circumstances, the acquittal recorded by the court below, which is the reason for CA No.110/2021 does not suffer any infirmity and, accordingly, the same is dismissed.

31. Turning back to the appeal filed by the respondent against the appellant for the offences under the Indian Penal Code, which has been noted

above, it is the case of the respondent that the cheque was issued as security with regard to the loan claimed to have been taken by the respondent from one Gowtham Chand. It is the case of the respondent that even in the year 2002, the loan taken from Gowtham Chand has been repaid. It is to be pointed out that the said Gowtham Chand has not made any claim with regard to non-payment of the amount taken as loan from him.

32. The trial court has recorded a finding that the blank cheque with the signature of the respondent was given to the appellant, without making any other endorsements such as amount, date, etc. When it is the specific case of the respondent that he had repaid the loan amount to Gowtham Chand and the cheque in issue, is claimed to have been issued as security towards the said loan, prudence warrants the respondent to have reclaimed the cheque from the appellant, who, it is alleged, had taken the security from the respondent, as he had introduced the respondent to the said Gowtham Chand. However, the respondent had not made any efforts to reclaim the cheque from the appellant inspite of the fact that he claims to have repaid the amount to Gowtham Chand. Though the son of the appellant had admitted

that the cheque was filled up by his father, viz., the appellant, however, the reason for such an act has not been established and no materials have been placed to establish *mens rea* on the part of the appellant and in the absence of the same, there is no material to establish forgery or forging of documents by the appellant.

33. When the respondent, of its own volition had given the blank cheque to the appellant and had not taken any steps to retrieve the cheque from the appellant, the mere fact of the appellant filling the amount and date in the cheque cannot be brought within the ambit of forgery, as even it is the admitted case of the respondent that there were business transactions between the appellant and the respondent. When there is no material to come to the conclusion that the cheque was forged for a particular purpose, it which has not been proved beyond reasonable doubt, it would be wholly unsafe to convict the appellant for the offence of forgery and forging false documents and rightly appreciating the same, the court below had acquitted the appellant, which also does not warrant any interference.

34. For the reasons aforesaid, there are no merits in both the appeals and, therefore, the same are dismissed confirming the order of acquittal recorded by the trial court.

21.06.2024

Index : Yes / No

GLN

To

The IX Metropolitan Magistrate
Saidapet, Chennai.

M.DHANDAPANI, J.

GLN

CRL. A. NO. 110 OF 2021
AND
CRL. A. NO. 683 OF 2022

21.06.2024