IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.603 of 2016

B.Usharani ... Appellant

Vs.

R.Munirathinam ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code, to set aside the orders, dated 14.09.2015 passed in S.T.C.No.204/2013 by the Judicial Magistrate No.IV, Salem.

For Appellant : Mr.S.Sathiya Chandran

For Respondent : Ms.S.P.Nirmala Parameswari

**JUDGMENT**

Challenging the Judgment and orders passed in S.T.C.No.204/2013, dated 14.09.2015 by the learned Judicial Magistrate No.IV, Salem, the present Criminal Appeal is filed by the complainant.

**2.** For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

**3.** The brief case of the appellant / complainant is as follows:

i. The accused, Munirathinam is the Managing Director of the Everest Educational Trust. The complainant, Usharani was one of the members in the said Educational Trust.

ii. According to the complainant, she invested huge sum of money in the Educational Trust and the accused undertook to give dividends for the said amount.

iii. On 10.03.2012, the accused being the Managing Trustee, issued a cheque (Ex.P1) bearing No.763598 drawn on Tamilnadu Mercantile Bank Ltd., Bommidi Branch for a sum of Rs.5,50,000/- in favour of the complainant.

iv. When the cheque was presented on 12.03.2012 for collection by the complainant through his bankers viz., State Bank of India, Dadagapatti Branch, Salem, the same was returned for the reason 'insufficient funds'.

v. At the request of the accused, the complainant once again presented the cheque on 29.05.2012 for collection. However, it was also returned for the reason 'insufficient funds' as is evidenced from the Cheque Return Memo, dated 29.05.2012 (Ex.P2).

vi. Thereafter, the complainant issued a statutory notice (Ex.P4) to the accused on 26.06.2012, demanding the latter to pay the amount due under the cheque within 15 days from the date of receipt of the notice.

vii. The accused, though received the notice on 29.06.2012 as is seen from the postal acknowledgement card (Ex.P5), did not come forward to make good the payment and did not also issue any reply notice.

viii. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.204/2013 before the Judicial Magistrate No.IV, Salem.

ix. The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C.

x. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.

xi. On the side of the complainant, the complainant examined herself as P.W.1 and marked Ex.P1 to Ex.P5.

xii. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. He examined one witness and marked Ex.D1 and Ex.D2.

xiii. The learned trial court judge after analysing the oral and documentary evidence on record, acquitted the accused vide his judgment and orders dated 14.09.2015, as against which, the present criminal appeal is filed by the complainant.

**4.** Heard Mr.S.Sathiya Chandran, learned counsel for the appellant and Ms.S.P.Nirmala Parameswari, learned Counsel for the respondent.

**5.** At the outset it may be observed that the accused has not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved.

**6.** Mr.S.Sathiya Chandran, learned counsel for the appellant would contend that the trial court even without a plea by the accused that the Educational Trust in which the complainant had invested is a non profitable organisation, had concluded that the Educational Trust being a non-profitable organisation, the complainant had not proved a legally enforceable debt. It is also his contention that when the accused had admitted his signature on the cheque, the trial Court without considering the presumption under Sections 118 and 139 of the Negotiable Instruments Act, had acquitted the accused. It is his further submission that though the accused had contended that the cheque (Ex.P1) was obtained in the Police Station by the complainant under threat and coercion, the accused had not proved the same. He did not also issue any notice either to the Police Officers who coerced him to hand over the cheque to the complainant or to the complainant in this regard. Therefore, the order of acquittal passed by the trial Court cannot be sustained, is his contention.

**7.** Per contra, Ms.S.P.Nirmala Parameswari, learned Counsel appearing for the respondent would contend that the trial court after analysing the oral/documentary evidence on record, had rightly acquitted the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

**8.** As already observed, the accused has admitted his signature on the cheque (Ex.P1) and therefore the initial presumption under Sections 118 and 139 of the Negotiable Instruments Act is in favour of the complainant. The accused though did not issue any reply notice, had cross examined P.W.1 on two aspects. One is that the disputed cheque (Ex.P1) was issued along with other cheques by him in the Police Station under threat and coercion. Secondly the Trust is a non-profitable organisation.

**9.** Thiru.V.Rathinam (D.W.1), Sub Inspector of Police, Central Crime Branch, Salem in his evidence has stated that Usha Rani, the complainant lodged a complaint with the Commissioner of Police, Salem stating that during 2009, she invested a sum of Rs.10,00,000/- in the Educational Trust run by the accused and also became a member in the Trust. Subsequently, she retired from the Trusteeship on 01.07.2010 and at the time of her retirement, the accused promised her to pay a sum of Rs.21,00,000/-. Since he did not keep up his promise, the complainant lodged a complaint with the Commissioner of Police which in turn was referred to him in C.S.No.466/ACCBC Salem City/2011. Accordingly, he took up investigation and enquired the complainant. However, since the complainant informed him (D.W.1) by submitting a letter (Ex.D1) that the matter was enquired by the Deputy Commissioner of Police on 17.02.2012 and that the accused also handed over the following cheques, he closed the complaint. The closure report was marked as Ex.D2.

| ***S.No.*** | ***Date of the Cheque*** | ***Amount*** |
|---|---|---|
| 1 | 17.02.2012 | Rs.1,00,000/- |
| 2 | 22.02.2012 | Rs.3,50,000/- |
| 3 | 10.03.2012 | Rs.5,50,000/- |
| 4 | 25.03.2012 | Rs.5,50,000/- |
| 5 | 31.03.2012 | Rs.1,50,000/- |

**10.** The evidence of D.W.1 clearly shows that the disputed cheque (Ex.P1) was issued in the presence of the Deputy Commissioner of Police, Salem. It is pertinent to point out that in the complaint, the complainant has stated that the accused issued the cheque for a sum of Rs.5,50,000/- to him on 10.03.2012. This is in total contradiction to the report of the Police. In fact, the cheque (Ex.P1) was issued prior to 10.03.2012. The complainant had not stated this either in her complaint or in her statutory notice. Thus, she has not come to Court with clean hands.

**11.** In the instant case, the accused had adduced sufficient evidence to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Therefore, the burden of proof shifts to the complainant to show that there was a legally enforceable debt on the date of presentation of the complaint. The complainant had not adduced any document to show the actual amount to be paid by the accused. No working sheet is filed along with the complaint. It is not known as to how she calculated that the accused is due and liable to pay a sum of

Rs.21,00,000/- as dividends, especially when her contention is that she invested only a sum of Rs.10,00,000/- during the year 2009 and retired from the Trusteeship in the year 2010 itself. The complainant during the course of cross examination also admitted that the Educational Trust is not a profit making organization. The trial Court had analysed these aspects and by a well considered order, acquitted the accused and there is no reason for this Court to interfere with the same.

**12.** In the result,

i. This Criminal Appeal is dismissed.
ii. The judgment and orders dated 14.09.2015 in S.T.C.No.204/2013 passed by the Judicial Magistrate No.IV, Salem, is confirmed.

**21.06.2024**

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

**R.HEMALATHA, J.**

vum

To
1. The Judicial Magistrate No.IV, Salem.

2. The Section Officer,

VR Section,

Madras High Court,

Chennai.

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