**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.03.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

**Crl.R.C.No.1345 of 2019**
**and**
**Crl.M.P.No.18052 of 2019**

Mukesh Kumar Surana
S/o.Babulal Surana ... Petitioner

Vs.

M/s.Galada Finance Ltd.,
Rep. by Ashokkumar Galada,
No.11, Periya Naicken Street,
Sowcarpet, Chennai – 79.
...Respondent

**Prayer**: Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. to call for the entire records in C.A.No.164 of 2012 on the file of the IV Additional Sessions Judge, City Civil Court, Chennai dated 06.07.2019 confirming the judgment and conviction imposed on the petitioner by the VIII Metropolitan Magistrate Court, George Town, Chennai in CC.No.9868 of 2006 dated 27.08.2012 and to set aside the same.

For Petitioner : Mr.V.Ramamurhty

For Respondent : Mr.M.Arunachalam

**ORDER**

This appeal at the instance of the accused, is directed against the judgment dated 27.08.2012 passed by the learned VIII Metropolitan Magistrate, Chennai in C.C.No.9868 of 2006, whereby the respondent/accused was convicted for the charge under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment of six months and directed to pay compensation of Rs.1,50,000/- to the complainant under Section 357(3) Cr.P.C. payable within a month.

2. Aggrieved by the judgment and conviction, the accused preferred a Criminal Appeal in Crl.A.No.164 of 2012 before the IV Additional Sessions Court, Chennai and the appeal was dismissed on 06.07.2019 by confirming the judgment of the trial Court. Challenging the judgment of the trial Court the accused has come up on revision before this Court.

3. The case of the complainant in brief is as follows:-

i) The complainant is M/s.Galada Finance Limited representing by its Field Manager Mr.Om prakash Sandhu. The complainant is a financier and the accused had approached the complainant and expressed financial urgency for business purpose.

ii) He had taken a loan on 09.04.2004 for a sum of Rs.5,00,000/- agreeing to repay the said amount in 10 monthly installments. But the accused failed to make payment to the complainant, he has executed a promissory note in favour of the complainant.

iii) The accused undertook several liabilities as regards the said transaction and towards the same, he issued the following three cheques:-

1. Cheque bearing No.415891 dated 09.01.2006
2. Cheque bearing No.415892 dated 09.04.2006
3. Cheque bearing No.415893 dated 09.05.2006

All the cheques were drawn on Indian Bank, Sowcarpet Branch, Chennai for Rs.50,000 each in favour of the complainant.

iv) Based on the assurance of the accused that sufficient funds will be available in his bank account to honour the cheques, the accused presented the cheques on 21.06.2006 to the Indian Bank, Sowcarpet Branch, Chennai. They were dishonoured with remarks 'Insufficient funds' as informed by the bank on 21.06.2006 by way of return memo.

v) The complainant by notice dated 22.06.2006 demanded the accused to pay the cheques amount within 15 days from the receipt of notice. He received the notice on 24.06.2006: but he did not choose to repay the said amount.

vi) Therefore, the complainant filed a complaint in the Court of VIII Metropolitan Magistrate, George Town, Chennai, under Section 138 of the Negotiable Instruments Act, 1881.

4. The accused did not dispute the fact that he issued three cheques each for Rs.50,000/- under his signature and also the receipt of the legal notice (Ex.P.5) from the complainant.

5. It is his defence that he borrowed a sum of Rs.1,50,000/- from the complainant and he gave promissory notes and cheques for repayment in installments. The accused paid the entire amount and after receipt of the said amount, the complainant has issued a receipt by admitting his repayment. His further defence is that having received the amounts, the complainant misused the cheques which were given by

the accused for security purpose and a false claim was made by way of filing complaint against him.

6. Mr.V.Ramamoorthy, learned counsel appearing for the petitioner/appellant vehemently argued that the issuance of cheques are admitted; it is his further contention that the appellant/ accused repaid the amount due and for which he has marked Ex.D1 receipt issued by the complainant; he would further contend that the presumption arise in favour of the complainant under Section 139 of the Negotiable Instruments Act is rebutted suitably by the appellant/ accused herein; both the trial Court as well as the appellate Court failed to appreciate Ex.D1 receipt which was issued by the complainant: the complainant having received the amount due and it was wrongly held that Ex.D1 receipt is not a true document.

7. Contending contra, Mr.M.Arunachalam, the learned counsel appearing for the respondent strenuously contended that the cheques issued by the accused were returned on 21.06.2006 with an endorsement “insufficient funds.” The complainant issued a statutory notice to the accused on 22.06.2006. It was received by him on 24.06.2006 and neither he sent a reply notice nor made payments. It is his further argument that the accused has not denied the signatures

found in the Ex.P3 cheques. Therefore, the presumption arose in favour of the complainant has to be rebutted suitably by the accused; he would further contend that for that, accused has marked the receipt Ex.D1 said to have been issued by the complainant. The receipt is a forged one. As he has filed to rebut the presumption, it is rightly concluded against the accused.

8. At trial, the complainant has examined himself as PW1 and eight documents were marked. Cheques three in number is Ex.P3 (series). Return memos are Ex.P4(series). On the side of the accused, the accused has examined himself as DW1 and the receipt is Ex.D1.

9. It is the evidence of PW1 that he is the power agent of complainant finance Company. The accused is liable to pay Rs.1,50,000/-. When a suggestion was posed to him that accused has repaid the amount of Rs.2,15,250/- on 05.04.2006 and for which Ex.D1 receipt was issued, was denied by him.

10. It has come on record through the evidence of RW1/ accused that he has received a loan of Rs.5,00,000/- from the complainant company and at the time of receiving the loan he has given ten cheques each for Rs.50,000/-. Out of ten cheques, six cheques

were encashed by the complainant for an amount of Rs.3,00,000/-. He paid the balance amount of Rs.2,15,250/- with interest on 05.04.2006. It is his further evidence that on receiving the said amount, he issued a receipt for the said amount which is marked as Ex.R1 (certified copy).

11. In *Rangappa vs. Mohan reported in 2010 (4) CTC 118 (SC)* wherein it has been held that:

> *"...The standard of proof to discharge the evidential burden is not as heavy as that usually seen in situations, where the prosecution is required to prove the guilt of an Accused. The Accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The Accused must meet the standard of -preponderance of probabilities-, similar to a Defendant in a Civil proceeding."*

12. In *Basalingappa Vs. Mudibasappa* reported in *2019 (5) SCC 418,* the Hon'ble Supreme Court held that once the execution of the cheque is admitted, Section 139 of the Act of 1881 mandates a presumption that the cheque was for a discharge of their liability. The said presumption is a rebuttable presumption and the onus is on the accused to raise the probable defence. It is open for the accused to rely upon the evidence led by him or he can also rely on the materials submitted by the complainant for raising the probable defence.

13. It is useful to refer to the observations made by the Hon'ble Supreme Court in *Rajesh Jain Vs. Ajay Singh reported in (2023) 10 SCC 148,* the Hon'ble Supreme Court held that the Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance of the cheque and secondly, in the event where the complainant proves that cheque was executed in his favour by the drawer.

14. It was further held that the presumption takes effect even in a situation where the accused contended that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. It was further held by the Hon'ble Apex Court that, as soon as the complainant discharges the burden to prove that the cheque was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act assists shifting the burden on the accused. He has to prove that the cheque was not received by the bank towards discharge of any liability.

15. A careful perusal of the evidence of PW1 and DW1 it is evident that the accused borrowed a sum of Rs.5,00,000/- from the complainant Company and he executed a pro-note for the same and also handed over ten cheques each for Rs.50,000/-. DW1 has admitted that out of ten cheques six cheques were encashed.

16. The signature found in Ex.P3 cheques is admitted by the accused. Once the signature found in the cheques is admitted, presumption arise in favour of the complainant under Section 139 of the Negotiable Instruments Act. It is a rebuttable presumption. Law is well settled that the evidential burden placed on the accused can be rebutted either by oral or documentary evidence or even through the cross-examination of PW1.

17. As regards the rebuttal presumption, the accused contends that he paid the amount of Rs.2,15,250/- on 05.04.2006 with interest for the due amount and he issued Ex.D1 receipt. The learned counsel for the appellant drew the attention of this Court that for the due amount the accused repaid the same with interest and in order to prove the same Ex.D1 receipt is filed. Therefore, there is no debt as such, due from the accused on the date of the complaint and therefore his complaint cannot be considered to be a legal one.

18. The signatures found in Ex.D1 is not admitted by the complainant side. It is pertinent to note that when PW1 was in the box Ex.D1 was not confronted to him. When the signature found in Ex.D1 is not admitted by the complainant, the accused is expected to have taken steps to prove the same in the manner known to law.

19. Had the accused repaid the amount due, after receipt of Ex.P5 legal notice he would have issued reply notice to the effect that he has paid entire amount due indicating the amount mentioned in Ex.D1.

Ex.P3 cheques details are as follows:-

| *Sl. No.* | *Date of Cheque* | *Cheque No.* |
|---|---|---|
| 1. | 09.01.2006 | 415891 |
| 2. | 09.04.2006 | 415892 |
| 3 | 09.05.2006 | 415893 |

20. The legal notice is issued on 22.06.2006(Ex.P5). The next day he has received the legal notice (Ex.P6 acknowledgement card). Ex.D1 (receipt) is dated 05.04.2006. Admittedly Ex.P3 cheques

are dated 09.01.2006, 09.04.2006 and 09.05.2006 and all the cheques were presented before the complainant bank on 21.06.2006 viz., Indian Bank, Sowcarpet Branch for collection and on the same day it was returned as “insufficient funds”.

21. The accused has admitted the signatures found in Ex.P3 cheques. It is also not in dispute that he has received a loan of Rs.5,00,000/- from the complainant company. Once he admits his signatures found in Ex.P3 cheques then the presumption arise in favour of the complainant under Section 139 of the Negotiable Instruments Act. The accused strongly contents that he has rebutted the presumption by filing Ex.D1 receipt. The details of Ex.D1 was not elicited to PW1. This being a vital document, it should have been shown to PW1 (Complainant's Power Agent). Based on the said reasons it has to be held that Ex.D1 is not proved in a manner known to law by the accused.

22. Based on the aforesaid discussion, I am of the considered opinion that the accused has certainly failed to raise the probable defence and both the trial Court and the appellate Court have concluded that the accused is found guilty under Section 138 of the Negotiable Instruments Act. This Court finds no valid reason to interfere with the same.

23. In the result, this Criminal Revision Case stands dismissed and the conviction and sentence passed by the learned VIII Metropolitan Magistrate Court, George Town, Chennai in CC.No.9868 of 2006 stands confirmed. The learned Magistrate on receipt of this copy of a judgment, shall issue warrant and secure the accused in order to undergo the period of sentence imposed by the trial Court within two weeks from the date of receipt of a copy of this order. Consequently the connected miscellaneous petition is closed, if any.

**20.03.2024**

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Index : Yes/ No
Internet : Yes/ No
Neutral Citation : Yes/ No
Speaking order/ Non-speaking order

Copy to

1.The IV Additional Sessions Judge,
City Civil Court, Chennai

2. The VIII Metropolitan Magistrate Court,
George Town, Chennai

**R.KALAIMATHI, J.**

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