IN THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.02.2024

PRONOUNCED ON : 18.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

A.S. (MD) No.23 of 2022
and
C.M.P.No.868 of 2022

G. Suryanarayanan S/o.Gomathinayagam ... Petitioner

vs.

P. Sathish S/o. Panneer ... Respondent

PRAYER: The Appeal Suit is filed under Section 96 of Code of Civil Procedure as against the judgment and decree dated 22.11.2021 passed in O.S. No.63 of 2019 on the file of the I Additional District Court, Madurai.

For Petitioners : Mr. D. Shanmugaraja Sethupathi

For Respondents : Mr. M. Karthikeyan

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This appeal suit has been preferred as against the decree and judgment passed in O.S. No.63 of 2019 on the file of 1st Additional District Court, Madurai dated 22.11.2021 wherein the respondent herein, being the plaintiff, has filed the Suit for recovery of money based on the cheque and the same was decreed as against the defendant, thereby the unsuccessful defendant preferred this appeal suit.

2. **The brief averments are as follows:-**

The plaintiff is doing General Stores business at Madurai in the name of "Meenakshi Marketing". The vendors of the Madurai Keezha Maasi Street used to purchase and sell things on loan basis and they used to receive amount after one week. The defendant purchased things from the general stores of the plaintiff and thereby, there is due of Rs.15 lakhs as on 20.12.2017. Thereby, the defendant issued a post-dated Cheque dated 20.01.2018 for Rs.15 lakhs drawn on ICICI Bank in favour of the plaintiff for the above said things purchased by him. On 20.01.2018, the plaintiff has approached the bank and enquired about the cheque, he came to know that there is no sufficient funds in the account of the defendant and the banker advised the plaintiff to settle the matter with the defendant. When the plaintiff approached the defendant in his house in respect of the payment of Rs.15 lakhs, he refused to pay the said amount. Therefore, the plaintiff gave a complaint before the Deputy Commissioner of Crime Branch, Madurai and the same was forwarded to the file of Inspector, Crime Branch, Vilakuthun Police Station and enquiry was conducted on 24.02.2018. The defendant, at the time of enquiry admitted his liability of Rs.15 lakhs and assured to pay a sum of Rs.7 lakhs within 6 months and the remaining amount of Rs.8 lakhs will be paid on 05.09.2018. To that effect, he has also submitted written statement before the police. The plaintiff also agreed for the same to receive the amount in two instalments. Therefore, the plaintiff did not present the cheque for collection and the date of three months' limitation was lapsed on 20.04.2018. The defendant, only to make the cheque invalid, agreed to pay the amount after 6 months. Therefore, the plaintiff has filed the Suit for recovery of money through cheque for a sum of Rs.15 lakhs. The plaintiff presented the cheque for collection on 20.12.2018 and the same was returned as "time barred". In the meantime, the defendant filed a Suit in O.S. No.498 of 2008 on the file of learned Additional District Munsif, Madurai stating that the said transaction between the plaintiff and the defendant to pay a sum of Rs.15,000/-, but the plaintiff herein demanded Rs.20,000/- and the defendant attempted to interfere with the possession of the plaintiff's property and thereby, he filed the said Suit and the same is pending. On 12.09.2016, the plaintiff had issued notice to the defendant and the defendant has not sent any reply. Therefore, he filed a Suit for recovery of money.

3. The defendant filed written statement stating that the averments found in the plaint are false and frivolous. The Suit is not maintainable either in law or on facts and the same is liable to be dismissed. It is false to state that the defendant issued a Cheque for Rs.15 lakhs for the things purchased by him from the plaintiff and he assured to repay the same within 30 days. It is false to state that the plaintiff had filed a complaint before the Deputy Commissioner of Police (Crime Branch), Madurai. Further, it is also false to state that there was an enquiry on 24.02.2018 and at that time, the defendant agreed to pay a sum of Rs.7 lakhs within 6 months and thereafter, remaining Rs.8 lakhs will be paid on 05.09.2018. In fact, the defendant was running a small General Stores in his house and he used to purchase grocery items and other things from 2012 to 2017, he had transaction with the plaintiff. There are no bills for the transactions to

avoid GST and other taxes. During the course of transactions, there was a due of Rs.15,000/- to be paid by the defendant to the plaintiff and the defendant was ready to pay the above said amount of Rs.15,000/- since he closed the business in the month of April 2017. However, the plaintiff demanded Rs.20,000/- and thereby, there was a dispute arose between them. The plaintiff has lodged false complaint before the Vilakkuthoon Police Station, Madurai. In that complaint, the plaintiff alleged that the defendant already paid a sum of Rs.9,86,000/- for construction of building and the same was denied by the defendant and thereafter, again the plaintiff demanded a sum of Rs.14,70,000/- towards the balance amount as if there is balance due to the business transactions. When the defendant tried to settle the matter for the above said Rs.15,000/-, the plaintiff refused to receive the same and demanded Rs.20,000/-. At that time, due to the coercion of the police officials, he signed in blank white papers. In fact, the defendant issued a notice dated 05.09.2018 to the plaintiff through his counsel by stating that during the business transactions, there was an outstanding balance of Rs.15,000/- to be paid by the defendant to the plaintiff and for the business purpose, he gave a cheque for security and demanded to return the cheque and the same was received by the plaintiff on 06.09.2018. Thereafter, on 09.09.2018, the plaintiff came to the house of the defendant and threatened him. On 16.09.2018, the plaintiff entered into the house of the defendant and damaged the household utensils by demanding money. Therefore, the defendant filed a Suit in O.S. No.498 of 2018, but the plaintiff has suppressed the notice issued by the defendant on 05.09.2018. The plaintiff has not filed any documents to show the transaction between the plaintiff and the defendant for a sum of Rs.15 lakhs. In the complaint given by the plaintiff before the Deputy Commissioner of Police, Crime Branch, Madurai, he stated that the defendant has to pay a sum of Rs.14,70,000/- and there is no reference in the said complaint in respect of the cheque issued for Rs.15,00,000/-. Therefore, the plaintiff has taken an inconsistent plea without any supporting documents. Therefore, the Suit is liable to be dismissed.

4. Based on the above said pleadings, the Trial Court has framed the following issues:-

(i) Whether the plaintiff is entitled to recover the suit amount .

(ii) To what relief, the plaintiff is entitled for?

5. Before the Trial Court, on the side of plaintiff, he examined PW1 to PW3 and marked Ex.P.1 to Ex.P.7. On the side of defendant, DW1 was examined and Ex.B.1 to Ex.B.12 were marked and witness documents were also marked as Ex.X1 to Ex.X3.

6. The Trial Court after hearing both sides and considering the evidence, decreed the Suit. Aggrieved by the said decree and judgment, the defendant has preferred this appeal on the following grounds:-

(i) The judgment and decree passed by the Trial Court are against law, weight of evidence and probabilities of the case.

(ii) The Trial Court ought to have considered that the defendant admitted that he used to supply goods without raising invoice or bill and thereby, the sale transaction is not legal and in order to avoid the sales tax, he has not raised bills. Since the plaintiff filed Suit for recovery of money based on the illegal transactions, he is not entitled for decree.

(iii) Section 118 of Negotiable Instruments Act is not applicable to the present facts of the case and the cheque is valid only for 3 months and the cheque was presented for collection on 20.12.2018 and thereby, the cheque has lost its character of negotiable instruments. Therefore, the presumption under Section 138 of Negotiable Instruments Act cannot be pressed into service.

(iv) The Trial Court failed to consider that the appellant has issued notice on 05.09.2018 by stating that the blank cheque was handed over to the respondent as security and he is only liable to pay a sum of Rs. 15,000/- and the respondent has fabricated the cheque by filling up the date and amount and misused the same after validity period.

(v) The Trial Court failed to consider that the respondent / plaintiff has not produced any piece of paper to establish the liability of the appellant / defendant.

(vi) The Trial Court failed to consider the material discrepancies between the evidence of PW1 and PW2. The trial Court failed to consider that the evidence of PW1 is not trustworthy and the plaintiff has lodged complaint before the Deputy Commissioner of Police, Madurai. In that complaint, the plaintiff stated that the defendant has to pay a sum of RS. 14,70,000/- whereas the Suit is filed for recovery of Rs.15,00,000/-. Further, before the Inspector of Villakuthool Police Station, the plaintiff has agreed to receive the Rs.7 lakhs and these discrepancies have not been considered by the Trial Court. Therefore, the decree and judgment passed by the Trial Court are liable to be set aside.

7. The learned counsel appearing for the appellant / defendant would contend that he was running a small grocery general stores in his house at Madurai and he used to purchase grocery things and other general provisions from the respondent / plaintiff's general stores. During the transaction, he used to purchase things on credit basis. For that, the appellant / defendant deposited signed, unfilled cheque to the respondent / plaintiff and in the year 2017, he stopped his business and there was an outstanding due of Rs.15,000/- only payable to the respondent / plaintiff, but the respondent / plaintiff demanded Rs.20,000/- and thereby, there was some misunderstanding between the plaintiff and the defendant. While so, on 05.09.2018, the defendant had issued notice to the respondent / plaintiff stating that he is ready to pay a sum of Rs.15,000/- outstanding balance pending to the respondent / plaintiff and he requested to return the unfilled, signed, blank cheque deposited with plaintiff for security purpose. After receipt of the above said notice, the plaintiff along with rowdy elements entered into the house of the appellant / defendant and threatened the

appellant / defendant to vacate the house and thereby, he filed Suit in O.S. No.498 of 2018 before the Additional District Munsif Court, Madurai. Thereafter only, the plaintiff filed this Suit. In the meantime, the respondent / plaintiff lodged a complaint before the police and the police has also enquired. At the time of enquiry, the police threatened the appellant to sign in the blank papers and the defendant signed in some blank white papers. The respondent / plaintiff has not produced any bills or invoices in order to prove the transaction between the plaintiff and the defendant and the plaintiff failed to prove that the cheque was issued for legally enforceable debt. The trial Court has failed to consider the above said aspects and erroneously decreed the Suit and therefore the decree and judgment passed by the Trial Court are liable to set aside.

8. The learned counsel appearing for the appellant / defendant, in support of his contention, has relied upon the following judgments:-

(i) ***G Pankajakshi Amma and others vs. Mathia Mathew (dead) through legal representatives and another reported in (2004) 12 SC 83.***

(ii) ***R. Arumugham vs. Natesan reported in 2012 (3) LW 689.***

(iii) ***Ashok Kumar vs. Latha reported in 2018 (2) CTC 225.***

(iv) ***Habeeb John vs. T.P. Abdul Aziz reported in (2022) 1 MLJ 706.***

9. The learned counsel appearing for the respondent / plaintiff would contend that the appellant / defendant purchased things from the general stores of the respondent / plaintiff and thereby there is due of Rs.15 lakhs and to settle the above said amount, the appellant / defendant issued a cheque for Rs.15 lakhs drawn on ICICI Bank, Madurai and thereafter, when the plaintiff asked about the repayment, the defendant refused to repay the amount. Therefore, he lodged a complaint before the Deputy Commissioner of Police, Madurai and the same was forwarded to the file of Inspector, Vilakkuthoon Police Station and the police officials enquired and at the time of enquiry, the appellant / defendant agreed to pay a sum of Rs.7 lakhs within 3 months and thereafter balance of Rs.8 lakhs has to be paid on 05.09.2018, but he failed to honour his promise and thereby he filed a Suit for recovery of money. The appellant / defendant has not denied the signature of the cheque and thereby, the defendant / appellant has proved his case, but the appellant / defendant failed to prove his defense through sufficient evidence and thereby the Trial Court correctly

decreed the Suit. Therefore, the decree and judgment passed by the Trial Court are correct and the present appeal is liable to be dismissed.

10. The learned counsel appearing for the respondent / plaintiff has relied upon the following judgments:-

(i) ***Rajesh Jain vs. Ajay Singh reported in (2023) 10 Supreme Court cases 148.***

(ii) ***Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay reported in AIR 1961 Supreme Court 1316.***

11. This Court heard both sides. Perused the materials available on record.

12. The ***points for determination*** in this appeal are as follows:-

1. Whether the cheque was issued by the appellant / defendant for the things purchased by the appellant / defendant through business transaction?

2. Whether the respondent / plaintiff is entitled to recover the amount through the Suit cheque?

3. Whether the decree and judgment of the Trial Court are sustainable in law and on facts.

4. Whether the appeal is to be allowed or not?

5. To what other reliefs, the appellant / defendant is entitled for?

13. Point No.1

Before the Trial Court, the respondent / plaintiff has filed a Suit for recovery of money based on the cheque for a sum of Rs.15 lakhs. According to the plaintiff, he was running a general stores in the name of "Meenakshi Marketing" and the appellant / defendant used to purchase the things on credit basis and thereby, as on 20.12.2017, the outstanding balance was Rs.15 lakhs. When the same was demanded by the respondent / plaintiff, the appellant / defendant issued a cheque dated 20.01.2018 drawn on ICICI Bank, Madurai for a sum of Rs.15 lakhs in favour of the respondent / plaintiff by saying that within 30 days, he would pay the amount. Thereafter, on 20.01.2018, when the respondent / plaintiff enquired with the bank, the bankers said that there is no sufficient balance in the appellant's account and advised him to approach the appellant / defendant. When the respondent / plaintiff asked the appellant / defendant about the same, the defendant refused to pay the said amount and thereby, he gave a complaint before the Deputy Commissioner of Police [Crime Branch], Madurai. The police officials enquired the matter on 24.02.2018. At that time, the appellant / defendant agreed to pay the said amount of Rs. 15 lakhs and within 6 months, he would pay the 1st instalment of Rs.7 lakhs and thereafter remaining amount of Rs.8 lakhs will be paid on 05.09.2018. Thereafter, the appellant / defendant has not paid the amount, as promised.

14. According to the appellant / defendant, he admitted the transaction between the plaintiff and the defendant, but he denied the transaction for a sum of Rs.15 lakhs and he only admitted the outstanding amount as Rs.15,000/-. Further, according to the appellant / defendant, he admitted that the unfilled, signed, blank cheque was issued for the purpose of security. The specific case of the respondent / plaintiff is that the appellant / defendant had purchased things from General Stores, thereby there is a due of Rs.15 lakhs. While so, it is the duty of the respondent /

plaintiff to prove that the cheque was issued for the above said business transaction, but the respondent / plaintiff has not filed any piece of paper to prove the transaction between the plaintiff and the defendant for the above said amount of Rs.15 lakhs. In this context, PW1 in his cross examination stated that “என்னென்ன தேதியில் எவ்வளவு சரக்குகளை எவ்வளவு தொகைக்கு என் நிறுவனத்தில் இருந்து பிரதிவாதிக்கு அனுப்பினேன் என்ற விபரத்தை சட்ட அறிவிப்பிலோ, வழக்குரையிலோ, நிரூபண வாக்குமூலத்திலோ சொல்லவில்லை. எனது நிறுவனத்தின் சார்பாக பிரதிவாதிக்கு சரக்குகளை அனுப்பியதற்கான கே\; பில், கிரெடிட் பில் ஆகியவற்றை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. பிரதிவாதிக்கு எந்தெந்த தேதியில் எனது நிறுவனம் சார்பாக எவ்வளவு சரக்குகளை அனுப்பினேன் என்பதற்கான கணக்கு வரவு செலவுப் புத்தகங்கள் எழுதி வைத்து பராமரிக்கிறேன். என் நிறுவனத்தில் வரவு செலவு கணக்குகளின் அடிப்படையில் ஆண்டுதோறும் விற்பனைவரி, வருமான வரி ஆகியவற்றை செலுத்துகிறேன். பிரதிவாதி வாதியிடமிருந்து சரக்குகளை கொள்முதல் செய்தது மூலமாக பிரதிவாதி வாதி நிறுவனத்திற்கு ரூ.15,00,000/- தர வேண்டியுள்ளது என்பதை விற்பனை வரி மற்றும் வருமான வரி கணக்கில் காட்டவில்லை”. Therefore, from the above said evidence, it is clear that the respondent / plaintiff was maintaining accounts in respect of the transactions, but he has not produced the said accounts before the Trial Court. Further, the said transactions have also not been shown in the income tax and sales tax records. Further, PW1 in his cross examination admitted that the appellant / defendant had issued Ex.B.1 notice dated

05.09.201, wherein he stated that the appellant / defendant issued signed blank cheque for security purpose. Thereafter, Ex.P.6, reply notice was issued by the respondent / plaintiff. In the said Ex.P.6, reply notice, there is no reference abou tthe date and place where and when the cheque was issued, have not been mentioned and the cheque was also neither presented on 20.01.2018 nor presented for collection within 3 months limitation period and the same was presented for collection only on 20.12.2018. Further no notice was sent to the appellant / defendant after return of cheque from the bank.

15. Even according to the respondent / plaintiff, cheque was issued on 20.12.2017 with post dated on 20.01.2018. The respondent / plaintiff has not presented the cheque for collection on 20.01.2018. Per contra, he has stated that he has approached the bank and asked about the cheque and the bank officials represented that there is no sufficient funds in the account. Once the respondent/ plaintiff got the cheque from the appellant / defendant for the purpose of business transactions, it is his duty to present the cheque for collection, but he has stated that the respondent / plaintiff approached the bank and the bankers stated that no sufficient funds and

advised him to settle the matter with the appellant / defendant. The said evidence of PW1 is unbelievable and not acceptable. The conduct of plaintiff creates a serious doubt and the said evidence is not trustworthy.

16. Further, according to the respondent / plaintiff, he had given complaint in respect of the above said cheque and thereafter in the enquiry, the appellant / defendant agreed to pay the amount in two instalments. The first instalment is after 6 months i.e., on 24.08.2018 and the second instalment was on 05.09.2018. But the cheque was not presented for collection within the time, but presented on 20.12.2018. Already the plaintiff came to know that there was no sufficient funds in the bank account and thereafter, he lodged a complaint and once again, he presented the cheque after knowing that the cheque was outdated and he presented the cheque only on 20.12.2018. Therefore, the attitude of the respondent / plaintiff shows his intention.

17. Further, it is an admitted fact that the appellant / defendant has filed a Suit in O.S. No.498 of 2018 as against the respondent / plaintiff and this Suit is subsequent to that Suit and the respondent / plaintiff has not

filed the Suit immediately after he came to know about the insufficient funds i.e., on 20.01.2018. Further, the appellant / defendant had already issued a notice stating that he is liable to pay only Rs.15,000/-, but the respondent / plaintiff demanded Rs.20,000/-. Further the appellant / defendant alleged in the notice that already issued a cheque for security purpose, but the same has not been denied either through reply notice or in the pleadings. Therefore, the respondent /plaintiff failed to prove that the cheque was issued for the business transactions of Rs.15 lakhs. Even according to the respondent / plaintiff, he used to give things on loan basis. If so, how such an huge amount of Rs.15 lakhs was due has to be explained by the respondent / plaintiff. There is no proper explanation on the side of respondent / plaintiff. An ordinary prudent man cannot give things for such a huge amount without any documents, thereby the contention of the respondent / plaintiff that the cheque was issued for the loan transactions for the things purchased in the general stores is not acceptable and the respondent / plaintiff has miserably failed to prove the same through sufficient evidence.

18. Further the respondent / plaintiff in his cross examination

admitted that he gave a complaint Ex.P.3 before the Deputy Commissioner of Police, Madurai and in the said complaint, the respondent / plaintiff has stated that the appelllant / defendant had borrowed a sum of Rs.3 lakhs from the respondent / plaintiff on 15.02.2016 and Rs.8 lakhs on 20.02.2016 for construction of house. But the same plaintiff in another complaint stated that for the things purchased in his general stores, the appellant / defendant issued a cheque and thereafter, when the respondent /plaintiff approached the bank, he came to know that there is no sufficient funds in the bank account and thereafter he gave the complaint. The said complaint was admitted by the respondent / plaintiff, in which he has stated that the cheque was issued for the business transactions in the general stores. Per contra, in the cross examination he has stated that in his complaint, he has mentioned about the amount borrowed for construction of house. In this context, PW1 stated in his cross examination that "என்னிடம் காட்டப்படும் ஆவணம் நான் பிரதிவாதிக்கு கடந்த 15.02.2016ல் ரூ.3,00,000/=மும், கடந்த 20.02.2016ல் ரூ.8,00,000/=மும் வீடு கட்டுவதற்காக நான் கொடுத்ததாக தெரிவித்து காவல் ஆய்வாளரிடம் கொடுத்த ஆவணம் என்றால் சரி தான். அது பிசா.3. அதற்குப் பிறகும் காவல் ஆய்வாளர் என்னை விசாரித்து 24.02.2018ல் புகாரை முடித்து வைத்தார் என்றால் சரி தான்". Therefore, the evidence of respondent / plaintifff is highly doubtful as to whether the cheque was given for the things purchased by the appellant / defendant from the general stores of the respondent / plaintiff or the amount borrowed by the appellant /defendant for the construction of house.

19. Further, the respondent / plaintiff in his cross examination admitted that the things supplied to the appellant / defendant are Cigaratte, tea and coffee powders and soaps etc. and he has shown as credit sales. Further he stated that he issued more than 20 to 30 bills. Again he has stated that he has not issued bill in the name of appellant / defendant. On the other hand, he used to issue slips. In that slip also, there is no mention about the name of the respondent / plaintiff or name of the shop and particulars and the slip only contains amount and the appellant/ defendant also did not sign in the said slip. In the earlier cross examination, the respondent / plaintiff admitted that he has bills and he is maintaining the accounts for the purchase of things by the appellant /defendant. Again he stated that he did not issue bills, he only issued slips that too without any mentioning the name of shop and other particulars and the slip contained amount only. Therefore, the evidence of respondent /plaintiff is not cogent and the same is untrustworthy.

20. Further, the respondent / plaintiff examined PW2 and PW3 to prove the transactions between the respondent / plaintiff and the appellant / defendant. PW2 stated that the respondent / plaintiff and the appellant / defendant are friends and he is running grocery shop adjacent to the plaintiff's shop and even according to the respondent / plaintiff and the plaintiff's side witnesses, it is the usual practice to purchase and to sell the things on loan basis and the loan will be repaid within 7 days. But here, the amount is huge amount of Rs.15 lakhs and therefore, the respondent / plaintiff has to prove that how such an huge amount of Rs.15 lakhs was given to the appellant / defendant without any bills. But, the respondent / plaintiff has miserably failed to prove the same. Per contra, PW2 has stated that there was a panchayat between the respondent / plaintiff and the appellant / defendant in respect of settlement of Rs.15 lakhs, but the respondent / plaintiff nowhere, either in his pleading or in his evidence, stated about the said panchayat and the presence of PW2. Even according to PW2, after 90 days from the date of issuance of cheque, the complaint was given, but as per the pleadings, the complaint was given immediately after 20.01.2018 and the police enquiry was conducted on 24.02.2018. Further PW2 also admitted that on 06.02.2018, the appellant / defendant

gave a complaint before the police and he also appeared before the police and during the police enquiry, the respondent /plaintiff has stated that the appellant / defendant borrowed a sum of Rs.3 lakhs and Rs.8 lakhs for construction of house and further he stated that the cheque was issued in the name of 'Meenakshi Marketing', whereas the present cheque shows that it was issued in the name of Sathish, the respondent / plaintiff and therefore, the evidence of PW2 is totally contra to the case of plaintiff as well as PW1 and hence it is not acceptable and not trustworthy.

21. Yet another witness is PW3. He also stated that there were transaction between the appellant / defendant and the respondent / plaintiff and thereby, Rs.15 lakhs was due payable by the appellant / defendant to the respondent /plaintiff and there is no evidence that how he came to know about the exact figure of the above said Rs.15 lakhs and he is only a hear-say witness about the issuance of cheque and on 01.01.2018, he saw the respondent / plaintiff and asked about the transaction between the respondent / plaintiff and the appellant / defendant. At that time, the respondent / plaintiff told that the appellant / defendant is dishonest in his business and advised him not to give any credit to the appellant /

defendant. Even according to the respondent / plaintiff, the cheque was issued on 20.12.2017 with post dated on 20.01.2018. Before that, the cheque was not presented for collection on 01.01.2018. While so, how it is possible to say that the appellant / defendant is dishonest is to be explained. Further, after some time, he came to know about the dishonesty through return of cheque and thereafter, the respondent / plaintiff lodged a complaint. But the said evidence is totally contra to the plaint averments and the evidence of the respondent / plaintiff. According to the respondent / plaintiff, the cheque was presented for collection only on 20.12.2018 and complaint was given on 06.02.2018. Therefore, evidence of PW3 is also highly doubtful and also not trustworthy. Even according to the respondent / plaintiff, the cheque was issued for the things purchased by the appellant / defendant. While so, it is the duty of the respondent / plaintiff to present the cheque for collection on a particular date, but he has not presented the cheque within the limitation period and he only deposited the cheque on 20.12.2018 i.e., after the limitation period. This also creates serious doubt over the issue of cheque as to whether it was issued for the business transactions as alleged by the respondent / plaintiff. Per contra, the defendant was examined as DW1 and he also marked Ex.B.1 to

Ex.B.12. The defendant before the filing of this Suit, issued notice to the plaintiff stating that an unfilled, signed cheque was issued for security purpose and there was an outstanding balance of Rs.15,000/- towards business transaction and the same was also received by the plaintiff and he issued reply. Further the defendant also filed a Suit in O.S. N.498 of 2018 as against the plaintiff prior to this Suit and the same was also admitted by the plaintiff. The DW1 also in his evidence stated all the above happenings. The non-presentation of the cheque by the plaintiff on 20.01.2018 for collection and belated presentation for collection of cheque after limitation period and non-production of bills for cheque amount of Rs.15,00,000/- shows that the cheque was not issued for business transaction of Rs.15,00,000/- and the evidence of DW1 is probabilised the case of defendant. Therefore, the defence of the appellant / defendant is probabilised that due to business transaction the blank signed cheque was issued to the plaintiff for security purpose. Therefore, the respondent / plaintiff failed to prove that the cheque was issued for the business transactions of Rs.15,00,000/- between the appellant / defendant and the respondent / plaintiff. Thus, **point no.1** is answered.

22. **Point No.2**

The respondent / plaintiff has filed a Suit for recovery of money based on the cheque alleging that the cheque was issued for the amount payable for the things purchased by the appellant / defendant. According to the appellant / defendant, the cheque was issued for the amount payable for the things purchased through credit basis. To prove the same, he examined DW1 and he already issued notice dated 05.09.2018 stating that he had business transactions on credit basis and for the security basis, a signed and blank cheque was issued. The respondent /plaintiff has also admitted the business transactions on credit basis. The respondent / plaintiff miserably failed to prove that the cheque was issued for the things purchased by the appellant / defendant and thereby, the defendant has probabilized his defence. In the previous point, this Court decided that the respondent / plaintiff failed to prove that there was legally enforceable debt and the cheque was issued for the transactions between the appellant / defendant and the respondent / plaintiff in the business for a sum of Rs.15,00,000/-. Further the respondent/ plaintiff failed to prove the passing of consideration through cheque. According to the appellant / defendant is liable only to pay a sum of Rs.15,000/-, but respondent /

plaintiff demanded Rs.20,000/-, thereby there was dispute arose between them. Thereafter, the cheque which was issued for the security purpose by the appellant / defendant was filled up by the respondent / plaintiff and he filed a Suit. In this context, the learned counsel appearing for the respondent / plaintiff would contend that once the appellant / defendant admitted the signature found in the cheque, there is presumption, but the appellant / defendant has failed to rebut the presumption and therefore, the respondent / plaintiff has proved his case.

23. In support of his arguments, he has relied upon the following judgements:-

*(i) **Rajesh Jain vs. Ajay Singh reported in (2023) 10 Supreme Court cases 148.***

(ii) Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay reported in AIR 1961 Supreme Court 1316.

On careful perusal of the above judgments, it is clear that as per *Section 118 of Negotiable Instruments Act, every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration",* the presumption shall be made until the contrary is proved.

In the case on hand, the respondent / plaintiff failed to prove that the cheque for a sum of Rs.15,00,000/- was issued for the business transactions through sufficient documents. Per contra, the appellant / defendant probabilized his case and therefore, the above said case laws will not be applicable to the present facts of the case.

23 (ii) Per contra, the learned counsel appearing for the appellant / defendant has relied upon the following judgments:

(i) ***R. Arumugham vs. Natesan reported in 2012 (3) LW 689.***

(ii) ***Ashok Kumar vs. Latha reported in 2018 (2) CTC 225.***

On careful perusal of the above said judgments, it is clear that when the appellant / defendant himself has admitted the execution, unless or until, the appellant / defendant, either by direct evidence or by circumstantial evidence acceptable to the Court, proves that the Negotiable Instrument was not supported by any consideration, the burden on the appellant / defendant is not shifted). Further, the appellant / defendant may adduce direct evidence to prove that the Negotiable Instrument was not supported by consideration and if he adduces acceptable evidence, the burden again shifts to the respondent / plaintiff and so on. The appellant / defendant may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again to the plaintiff.

In the case on hand also, the appellant / defendant admitted the signature in the cheque, but he probabilized his defence that the cheque was issued only for the security purpose due to business transactions. Therefore, the burden shifted to the respondent / plaintiff and the respondent / plaintiff failed to prove the same.

23 (iii) The learned counsel for the appellant / defendant also relied upon judgment in ***G Pankajakshi Amma and others vs. Mathia Mathew (dead) through legal representatives and another reported in (2004) 12 SC 83.***

A careful perusal of the above said judgment, it is clear that if the case is filed on the basis of negotiable instrument, the Court could not have lent its hands and passed a decree if the transactions are unaccounted, then they are illegal transactions and no Court can come to the aid of the party in an illegal transaction. In such case, the loss must be allowed to lie where it falls.

In the case on hand also, according to the appellant / defendant he did not issue any bill and the transactions have not been reflected in the sales tax and income tax account documents, however the plaintiff failed to prove the business transactions for the cheque amount, thereby the above said case law is not applicable to the present facts of the case.

24. Therefore as discussed above and in view of the above said judgments, this Court is of the opinion that the respondent / plaintiff has miserably failed to prove his case and thereby, he is not entitled to any relief through the Suit cheque. Thus, **point no.2** is answered accordingly.

25. **Point Nos.3 and 4**

Before the Trial Court, the respondent / plaintiff has filed a Suit for recovery of money based on the cheque. According to the respondent / plaintiff, the cheque was issued for the business transactions between the appellant / defendant and the respondent / plaintiff and the appellant / defendant used to purchase things on credit basis, for that he issued a cheque for Rs.15 lakhs. But according to the pleadings and evidence of

PW1, the cheque was issued on 20.12.2017 post dated 20.01.2018 and then the cheque was not presented for collection on 20.01.2018. Per contra, a complaint was given on 16.02.2018 before the police. But the cross examination of PW1 categorically admitted that he gave a complaint / Ex.P.3 for the amount of Rs.3 lakhs and Rs.8 lakhs borrowed by the appellant / defendant, for the purpose of construction of his building. The appellant / defendant also denied the payment of Rs.15 lakhs. But he admitted the issuance of a blank cheque with his signature as security for business transactions. The business transaction on credit basis, also admitted by both the parties. The Trial Court failed to consider the above said aspects and further, the respondent / plaintiff has not produced any piece of paper to prove the business transactions for a sum of Rs.15 lakhs. Once the plaintiff pleaded that due to business transaction the cheque was issued, he has to prove those transactions for the cheque amount, when the defendant denied the cheque amount. It is also an admitted fact that the appellant / defendant has purchased only small things like cigaratte, tea and coffee powder and other things. While so, how such huge amount was pending due, has to be explained by the respondent / plaintiff, but the respondent / plaintiff has failed to explain the same.

26. Further the evidence of PW2 and PW3 are contradict to each other in respect of isue of cheque and transactions and their evidencces are also untrustworthy and the same was also not considered by the Trial Court. The Trial Court only based on the presumption under Section 118 of Negotiable Instruments Act that the signature was not denied by the defendant and decreed the Suit. It is true that initial burden lies on the appellant / defendant to prove the contrary, when he admitted signature found in the cheque. Where the defendant has probabilized his defence, the burden shifted to the respondent / plaintiff. But in this case, the appellant / defendent probabilised his case and thereby, the burden shifted to respondent / plaintiff and the respondent / plaintiff failed to discharge his burden and the same has not been considered by the Trial Court. Therefore, the judgment and decree passed by the Trial Court are unsustainable and the same are liable to be set aside by allowing this appeal. Thus, the **point no.3 and 4** are answered accordingly.

27. **Point No.5**

This Court, in previous points, after elaborate discussion, decided that the respondent / plaintiff has failed to prove his case and thereby, the decree and judgment of the Trial Court are liable to be set aside. Therefore, the appellant is entitled to the relief as prayed for in the appeal and the suit is liable to be dismissed. Thus, the **point no.5** is answered accordingly.

28. In the result, the appeal suit is allowed and the decree and judgment dated 22.11.2021 passed in O.S. No.63 of 2019 on the file of the I Additional District Court, Madurai are set aside and the Suit in O.S. No. 63 of 2019 is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

18.04.2024

mjs
Internet : Yes
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Neutral Citation:Yes/No

To
The I Additional District Court, Madurai.

P.DHANABAL,J

(mjs)

Pre-delivery judgment in
A.S. (MD).No.23 of 2022

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