



Crl.A. No.635 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 17.04.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.635 of 2016

S.K. Muthusami

.. Appellant

Versus

S. Bhuvaneswaran

.. Respondent

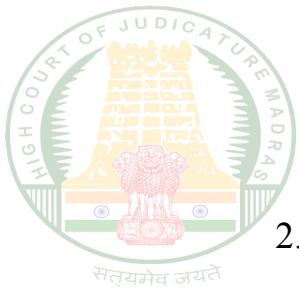
Criminal Appeal is filed under Section 378 of Cr.P.C., praying to set aside the Judgment dated 25.04.2016 passed in C.C.No.36 of 2009 on the file of the learned Judicial Magistrate-I, Erode.

For Appellant : Mr. M. Karthik
for Mr. I.C. Vasudevan

For Respondent : Mr. M. Guruprasad

JUDGMENT

This Criminal Appeal had been filed against the Judgment dated 25.04.2016 passed in C.C.No.36 of 2009 on the file of the learned Judicial Magistrate-I, Erode.

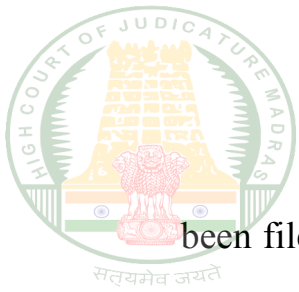


2. The brief facts, which are necessary for the disposal of this

Criminal Appeal, are as follows:-

2.1. The Appellant in this Appeal is the Complainant, who had filed the Complaint in C.C. No. 36 of 2009. As per the complaint, on 05.04.2008, the Respondent/Accused borrowed a sum of Rs.2,00,000/- and promised to repay the same in two instalments. The first instalment of Rs.1,00,000/- will be paid on 10.05.2008 and the other instalment of Rs.1,00,000/- will be paid on 20.05.2008. On receipt of the sum of Rs.2,00,000/- the Accused had issued two cheques, each for Rs.1,00,000/-. When the cheques were presented for collection through Federal Bank Limited, Erode Branch on 21.05.2008, they were returned on 22.05.2008 for the reason 'insufficient funds'. Therefore, the Appellant issued a statutory notice on 02.06.2008 calling upon the Respondent/Accused to pay the cheque amount. Though the Accused received the notice, he had not sent any reply and therefore, the complaint was filed.

2.2. In order to prove the averments in the complaint, the Appellant examined himself as P.W-1 and marked Ex.P-1 to Ex.P-6. On conclusion of Complainant side evidence, when the Accused was questioned under Section 313 (1) (b) of the Code of Criminal Procedure about the incriminating materials made available against him, he had stated that a false complaint had



been filed against him. However, the Respondent/Accused had not examined any witness on his side.

2.3. The learned Judicial Magistrate No.I, Erode, on appreciation of the oral and documentary evidence concluded that even though the Complainant raised an initial presumption, it was successfully rebutted by the Accused by raising doubt as to the source of income of the Complainant. In fact, the Complainant had not satisfactorily explained about the source of income to extend a sum of Rs.2,00,000/- as loan to the Accused. Further, the Trial Court concluded that even prior to the transaction in question, the Complainant and Accused had acquaintance, however, the Complainant had stated as though he knew the Accused only through his business activities. Accordingly, by Judgment dated 25.04.2016, the learned Judicial Magistrate dismissed the complaint filed by the Complainant.

2.4. Aggrieved by the dismissal of the complaint by Judgment dated 25.04.2016 passed in C.C.No.36 of 2009 on the file of the learned Judicial Magistrate-I, Erode, the Complainant had filed this Criminal Appeal.

3. The learned Counsel for the Appellant submitted that the Appellant extended a loan of Rs.2,00,000/- to the Accused. On receipt of



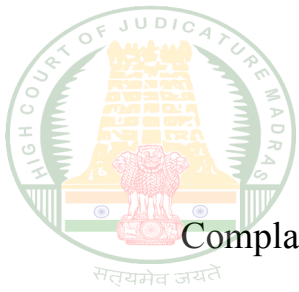
WEB COPY

which, the Accused handed over two cheques viz., Cheque No.010726 dated 10.05.2008 and Cheque No.010727 dated 20.05.2008 each for Rs.1,00,000/- towards repayment of the loan. Those cheques were returned on 22.05.2008 with an endorsement “funds insufficient”. Therefore, a legal notice was issued on 02.06.2008 to the Accused, which he received on 03.06.2008, however, the Accused neither replied nor paid the cheque amount. Thus, the Complainant-Appellant raised a strong presumption in favour that he had paid money to the Accused and for repayment of the same, the Accused had issued the two cheques. It is the submission of the learned Counsel for the Appellant that the learned Judicial Magistrate failed to consider that the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 is in his favour. Even though such a presumption is a rebuttal presumption, the Respondent/Accused had neither issued a reply notice nor examined himself as a witness. The Respondent/Accused also did not mark any document to rebut the presumption. While so, the Trial Court ought to have recorded a finding of guilt against the Accused by drawing a presumption against him. Instead, the learned Judicial Magistrate-I, Erode dismissed the Complaint on the ground that the Complainant did not have sufficient means to extend the loan for a huge amount of Rs.2,00,000/-. The wherewithal or the capacity of the Complainant cannot be questioned when the initial presumption raised by him



is stronger. When the Accused had not replied to the statutory notice and had not settled the dues, the Accused cannot be heard questioning the wherewithal of the Complainant. The learned Judicial Magistrate-I, Erode ignored those guidelines and acquitted the Accused which is perverse. Therefore, the Judgment of the learned Judicial Magistrate-I, Erode dated 25.04.2016 in C.C.No.36 of 2009 is perverse and it is to be set aside.

4. Per contra, the learned Counsel for the Respondent submitted that the Complainant does not have the capacity to extend such huge amount as a loan to the Respondent/Accused. The non-issuance of reply notice by the Accused will not help the Complainant to claim that the Accused admitted the claim of loan. As per the reported ruling of the Hon'ble Supreme Court in the case of *Krishna Janardhan Bhat Vs. Dattatraya G. Hegde* reported in (2008) 4 SCC 54; and in the case of *Rangappa Vs. Sri Mohan* reported in (2010) 11 SCC 441, the Accused need not enter the witness box and examine himself to rebut the presumption. The Accused can make use of materials available in the course of the evidence by the Complainant and to raise a preponderance of probabilities in his favour. In this case, the Accused cross-examined the Complainant at length. During his cross-examination, the Complainant fairly conceded that his income is too low by which it was proved that the



WEB COPY

Complainant was not resourceful enough to extend such a huge amount of Rs.2,00,000/- as loan to the Accused. The Complainant admitted that he is working as a commission agent in the Textile Shops in Erode and he is earning approximately Rs.30,000/- per month. Thus, it was established that the Complainant has no wherewithal to pay loan of Rs.2,00,000/- to the Accused. Further, it was not disclosed as to what was the purpose for which the Accused borrowed such a huge amount. The statutory notice as well as the complaint is bereft of any material fact as to what was the acquaintance between the Complainant and Accused, what was the mode in which the amount of Rs.2,00,000/- was paid to the Accused. The complaint merely says that Rs.2,00,000/- was paid and 2 cheques were issued by the Accused, but they were dishonoured on presentation. Therefore, the Trial Court is wholly justified in dismissing the complaint filed by the Complainant.

5. The learned Counsel for the Respondent invited the attention of this Court to the cross-examination of P.W-1/Complainant in which he claimed that he does not know the financial capacity of the Accused or his father. At the same time, the Complainant admits that he was an acquaintance of his father. The Complainant also admits that he was aware of the death of the father of the Accused. However, these details were not disclosed in the

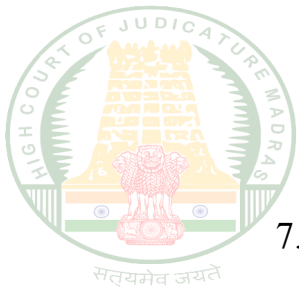


statutory notice or complaint, but were disclosed for the first time in the cross-examination. In any event, when the Complainant claims that he is working as Commission Agent in Textile Shops and earning from Rs.30,000/- to Rs.40,000/- per month, he cannot be expected to lend a whopping sum of Rs.2,00,000/- as a loan. According to the learned Counsel for the Respondent/Accused, the father of the Accused was running dying unit and he is an affluent person. On the other hand, the Complainant admits in his cross-examination that he earns less than Rs.30,000/- as Commission Agent and Rs.10,000/- from rental income. Even to prove rental income, the Complainant had not marked any document. The dismissal of the complaint by the learned Judicial Magistrate No.I, Erode is a well reasoned judgment which does not warrant any interference by this Court. Therefore, he prayed for dismissal of this Criminal Appeal as having no merit.

Point for consideration:

Whether the Judgment of the learned Judicial Magistrate-I, Erode in C.C.No.36 of 2009 dated 25.04.2016 is to be set aside as perverse?

6. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent.



7. Perused the evidence of P.W-1 and the documents under Ex.P-1 to Ex.P-6. Also, the judgment dated 25.04.2016 passed in C.C.No.36 of 2009 on the file of the learned Judicial Magistrate-I, Erode.

8. The Complainant had filed the complaint in C.C. No. 36 of 2009 alleging that he had paid Rs.2,00,000/- to the Respondent/Accused and to repay the same, the two cheques were issued by the Accused. It is further stated that on presentation of the cheques, they were dishonoured for the reason “insufficient funds”. Further, it is stated that he had sent a notice dated 02.06.2008 under Ex.P-5 and it was also received by the Respondent/Accused, under Ex.P-6, postal acknowledgment card, but he had neither paid the amount nor sent any reply notice.

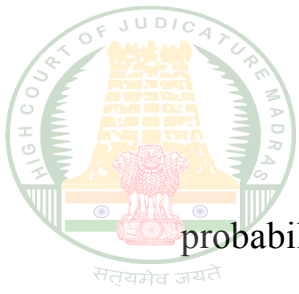
9. It is evident that the complaint of the Complainant is bereft of any material particulars. At the outset, the Complainant did not disclose as to how he had paid the sum of Rs.2,00,000/- to the Respondent/Accused. It is not known as to whether the sum of Rs.2,00,000/- was paid by way of cash or cheque or any other mode. The Complainant, while filing a complaint under Section 138 of The Negotiable Instruments Act, 1881, is bound to disclose the manner in which the amount was paid. In this case, the Complainant had not



even filed the bank statement or any other document evidencing his resourcefulness to pay the amount.

10. It is true that the Respondent/Accused, upon receipt of the statutory notice dated 02.06.2008, had neither paid the cheque amount nor sent a reply notice. For rebutting the initial presumption that may be raised by the Complainant in a complaint under Section 138 of The Negotiable Instruments Act, 1881, it is essential for the Accused to issue a reply notice where he can deny the receipt of the amount from the Complainant or call upon the Complainant to disclose as to the manner in which the loan amount was paid to him. This is one of the fundamental requirements for the Accused in a complaint under Section 138 of The Negotiable Instruments Act, 1881 to rebut the initial presumption. If the Accused missed this opportunity, then he had to establish the preponderance of probabilities in his favour by cross-examining the witnesses examined on behalf of the Complainant or by filing any other documents, contrary to the case pleaded by the Complainant, to disprove the case of the Complainant.

11. In this case, through the cross-examination of P.W-1, the Respondent/Accused had successfully established the preponderance of



probabilities in his favour. Through the cross-examination of P.W-1, the

Respondent/Accused had brought out that the Complainant has no wherewithal to extend such a huge amount of Rs.2,00,000/- to him. It was also brought out in the cross-examination that the Complainant is working as a Commission Agent in Textile shops apart from receipt of rental income of Rs.10,000/- per month. However, even to prove that the Complainant is getting Rs.30,000/- as monthly income, he had not produced any evidence such as statement of bank etc., In the cross-examination, when P.W-1 was confronted as to the details of the property from which he is getting Rs.10,000/- per month as rent and whether any document had been filed, he had replied that he had not filed any such document. The cross-examination of P.W-1 would give a clear picture that the averments made in the complaint had not been proved and established by the Complainant in this case.

12. As mentioned above, in the complaint, the Complainant had not even disclosed the relationship between him and the Accused which prompted him to advance a sum of Rs.2,00,000/- as loan. On the contrary, only in the cross-examination, P.W-1 could say that he had transactions with the father of the Respondent/Accused, who owned a dying unit in Erode. He also states that the father of the Respondent/Accused died in the year 2008. These factual



WEB COPY

details ought to have been narrated by the Complainant while filing the complaint. However, without disclosing the relationship between him and the Respondent/Accused, the mode of payment of Rs.2,00,000/- and his wherewithal to extend such a huge amount as loan, the complaint had been filed. Merely by obtaining the cheques, presenting it and getting it dishonoured, the Complainant cannot make out a case under Section 138 of The Negotiable Instruments Act, 1881. It is needless to mention that an initial presumption is raised by the Complainant by filing the cheques signed by the Accused, however, such presumption shall exist till such time the Accused rebutting such presumption. When once the Accused successfully rebuts the presumption, thereafter, the burden to prove the complaint shifts back to the Complainant. In this case, the Respondent/Accused established the preponderance of probabilities in his favour and therefore, the burden to prove the averments in the complaint fell back on the shoulders of the Complainant, but he had miserably failed to discharge such burden.

13. On perusal of the cross-examination of the Complainant as P.W-1, it is noticed that the Complainant had evaded many suggestions put to him. When he was asked as to whether, with the meager income of Rs.30,000/- per month he could extend a loan of Rs.2,00,000/- to the Accused, his answer is



evasive. For the suggestion as to the financial capability of the Accused to repay the amount, the Complainant had stated that in good faith, he had extended the loan amount to the Respondent/Accused. It is noticed that the Respondent/Accused was aged 22 years and he had lost his father a few months back, prior to the date on which the Complainant alleged to have given him loan of Rs.2,00,000/-.

14. It is also to be mentioned that the Respondent/Accused did not issue a reply notice to the statutory notice sent by the Complainant. Normally, when Accused in a complaint under Section 138 of The Negotiable Instruments Act, 1881, did not issue a reply notice, at the first blush, it will be difficult to disprove the averments of the complaint. In this case, notwithstanding the fact that the Respondent/Accused did not issue a reply notice, he successfully established preponderance of probabilities in his favour by cross-examining P.W-1. Merely because the Respondent/Accused did not reply to the statutory notice, it cannot be presumed that he had admitted the contents contained in the statutory notice.

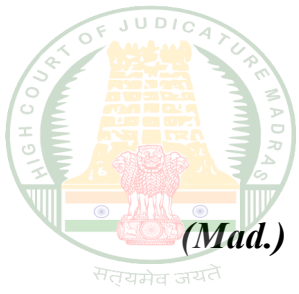
15. The learned Judicial Magistrate-I, Erode, had in the course of appreciation of evidence relied on several rulings as to how an initial



WEB COPY

presumption could be raised by a Complainant and the opportunities available to an Accused to rebut such presumption. For non-issuance of a reply notice to the statutory notice sent by the Complainant reliance was placed on the decision in ***P.Gnanambigai Vs. S.Krishnasamy and another*** reported in **2011 (1) MWN (Cr.) DCC 42** wherein it was held that though the Accused failed to reply to the statutory notice, whether he is able to rebut the presumption in his favour has to be looked into? In the instant case, though the Accused failed to issue a reply to the statutory notice, he raised a valid rebuttal presumption in his favour through the cross-examination of P.W-1. It was brought out in the cross-examination of P.W-1 that Ex.P-1 and Ex.P-2 cheques were issued by the Respondent/Accused towards security for the transaction between P.W-1 and his father. It is noticed that soon after the death of the father of the Respondent/Accused, the present complaint had been filed by the Complainant by utilising the cheques issued as security by the Respondent/Accused.

16. In the case of ***Vijay Vs. Laxman and another*** reported in **2013 (1) MWN (Cr.) DCC 161 (SC)**, the Honourable Supreme Court held that the non-disclosure of details of the loan or documentary evidence in support thereof are fatal to the case of the Complainant. Similarly, in the case of ***S.Nagalakshmi Vs. R.Nagalingam*** reported in **2012 (3) MWN (Cr.) (DCC) 34**



WEB COPY

(*Mad.*) it was held that it was not disclosed as to how the Complainant had advanced loan to the Accused, either by cash or cheque. In the absence of such material particulars, the Accused is entitled to acquittal.

17. The learned Judicial Magistrate-I, Erode, in the Judgment of acquittal, relied on the ruling of this Court in *M.Palanisamy Vs. K.Karvannan* reported in **2013 (1) MWN (Cr.) DCC 72 (Mad.)** and concluded that the Complainant failed to establish his case after the Respondent/Accused rebutted the initial presumption raised by him as required under Section 138 and 139 of The Negotiable Instruments Act, 1881. The learned Judicial Magistrate-I, Erode, on appreciation of evidence, particularly, the cross-examination of P.W-1, accepted the defence of the Respondent/Accused that the Complainant was not resourceful enough to advance a whooping sum of Rs.2,00,000/- as loan to him. Under those circumstances, the findings of the learned Judicial Magistrate-I, Erode, dismissing the Complaint of the Complainant is well founded and there is nothing for this Court to interfere with the same. The learned Judicial Magistrate-I, Erode, on consideration of the entire evidence on record rightly acquitted the Respondent/Accused.

18. In the light of the above discussion, the point for consideration is



Crl.A. No.635 of 2016

answered in favour of the Respondent and against the Appellant. The

Judgment dated 25.04.2016 passed in C.C.No.36 of 2009 by the learned Judicial Magistrate-I, Erode, is found proper which does not call for any interference by this Court and the same is to be confirmed.

In the result, **this Criminal Appeal is dismissed.** The Judgment of the learned Judicial Magistrate-I, Erode in C.C.No.36 of 2009, dated 25.04.2016, is confirmed.

17.04.2025

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1.The Judicial Magistrate - I,
Erode.

2.The Section Officer,
Criminal Section,
High Court Madras.



WEB COPY



Crl.A. No.635 of 2016

SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment made in
Crl.A.No.635 of 2016

17.04.2025