IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.04.2025

CORAM:

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

Crl.A.No.43 of 2010

D.Ashok Kumar ... Appellant/Complainant

Versus

V.Gopinathan ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the order passed in C.C.No.166/2006 dated 04.11.2009 on the file of learned Judicial Magistrate No.VI, Coimbatore.

For Appellant : Mr.S.N.Arun Kumar
for Mr.M.N.Balakrishnan

For Respondent : Mr.K.Raju

**JUDGMENT**

The appellant as complainant filed a private complaint against the respondent in C.C.No.166 of 2006 for offence under Section 138 of the Negotiable Instruments Act. The trial Court, by the judgment dated

04.11.2009, dismissed the complaint and acquitted the accused, against which, the present appeal.

2.The gist of the complaint is that the appellant's father Duraisamy Naidu and his mother had given loan to the respondent, for which the respondent executed promissory notes from 05.08.1996 to 12.11.1997 for a total sum of Rs.3,00,000/-. The appellant's mother Vasantha on 15.11.1997 had given a loan for a sum of Rs.50,000/-, the respondent also paid interest for it. Thereafter, the appellant's father passed away on 22.10.2004. The appellant approached the respondent and demanded the return of principal amount with interest. For the principal amount of Rs.3,50,000/- and for the interest of Rs.1,89,000/- in total, the respondent issued a cheque for Rs.5,39,000/- drawn on State Bank of India, S.R.K.V. Branch, Coimbatore bearing No.713676 dated 07.04.2005. This cheque was presented by the appellant in his bank, namely, Central Co-operative Bank, Coimbatore on 07.04.2005 and the same was returned on 08.04.2005 with an endorsement 'payment stopped by the drawer'. Following the same, the appellant issued a statutory notice on 25.04.2005 to the respondent. The respondent received the same and sent a reply notice with false allegations. Thereafter a rejoinder was sent, again a reply was sent and following the statutory conditions complaint filed. During trial, appellant examined himself as PW1 and marked Exs.P1 to P19. The respondent examined three witnesses including himself as DW3 and marked Exs.D1 to D12. On conclusion of the trial, the trial Court dismissed the complaint and acquitted the respondent.

3.The contention of the learned counsel for appellant is that the respondent not denied the execution of the promissory notes/Exs.P1 to P6 and with regard to the cheque/Ex.P7, his contention is that this cheque was given as security to the appellant's father. After the death of appellant's father, as legal heir, the appellant filed this appeal. His father's death certificate marked as Ex.P14 and Legal Heir Certificate as Ex.P15. The defence of the respondent is that the respondent used to stand as guarantor for the loans, which was given by the appellant's father to the known persons of the respondent and during such transaction the respondent executed promissory notes and issued four undated signed cheques bearing Nos.713676, 713677, 713678 and 713679 as security. The loans were discharged to the appellant's father and cheques were no more unenforceable, is not proper. The trial Court failed to consider that the respondent though takes a specific stand that loan was discharged, no proof produced. The respondent not denied issuance of cheque and signature, hence, statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act comes into play. The statutory presumption stand against the respondent and it is for the respondent to prove or probabilise his defence that the liability discharged to the appellant's father. The trial Court for various other reasons placing reliance on the evidence of DW2/ Selvaraj that the respondent/DW3 only stood as guarantor and loan amount discharged, which is without any proof. DW1 is the Bank Manager, who states about giving stop payment letter by the respondent on 17.07.2003.

4.The further contention of the learned counsel for appellant is that cheque is of the year 2005. The respondent examined himself as DW3. He gives a story that he issued a cheque as guarantor for the loans, which was given by the appellant's father to the known persons of the respondent and all the loans were discharged. Except for the oral evidence, there is no other documents, evidence to prove that loans discharged. In this case, the other contention of the respondent is that the appellant using other two cheques, namely, Cheque Nos.713677 and 713679 lodged a false complaint against the respondent using one Narayanasamy of Dindugal and one Gnanavadivel Vijayarajan of Pollachi. The transactions between the respondent and Narayanasamy and Gnanavadivel Vijayarajan are independent and nothing to do with the appellant's transactions. Further, the trial Court placed heavy reliance on the reply notice of the respondent to the appellant as well as to the Gnanavadivel Vijayarajan and the police complaint given against the appellant, Narayanasamy, Gnanavadivel Vijayarajan, which are all created documents. The trial Court finding that the respondent denied the liability and the appellant not proved his case that the cheques were received by him in discharge of liability and dismissing the complaint is not proper based on the evidence and materials available in this case. Hence, the judgment of the trial Court is perverse and the same is liable to be set aside.

5.The learned counsel for respondent strongly opposed the appellant's contention and submitted that right from the beginning the respondent denied issuance of cheque for discharge of any liability. It is the case of the respondent that appellant's father Duraisamy used to given loans and the respondent stood as guarantor to the loans, which were given by the Duraisamy to the known persons of the respondent and the respondent executed pro-notes and issued signed blank cheques as security. The pro-notes/Exs.P1 to P6 are time barred initially issued in the year 1996 and the amounts paid which was valid till 20.06.2002. Now pro-notes time-barred. The appellant placing reliance on the security cheque, which was given in the year 1996, filled up the same and presented Ex.P7/cheque claiming it was issued for liability. The appellant had given a letter to its bankers, State Bank of India on 17.07.2003 giving the details of the cheque and informed the bank that the transaction pertaining to the above cheque discharged, no liability exist and it has become stale. The Bank Manager examined as DW1 confirms the cheques returned for the reason 'payment stopped by the drawer'. DW2/Selvaraj had taken loan from appellant's father Duraisamy and he confirms that he executed pro-notes and the respondent stood as guarantor and issued signed blank cheques. His loan transaction discharged, further when the appellant's father was requested to return the signed pro-notes and blank cheques it was informed that the cheques and pro-notes got misplaced and would be returned as and when it is found. Thereafter, the appellant's father passed away on 22.10.2004. Using the blank cheques, the appellant filled up the same in his name and presented Ex.P7.

6. He further submitted that the appellant during cross examination admits that his mother is still alive and she has not given any authorization to the appellant to collect the amount. Further the appellant admits that he is not aware whether the appellant's father Duraisamy and his mother were Income Tax Assesses and whether any accounts maintained and what was the transaction between the Duraisamy and the respondent. Hence, the appellant is not aware about any of the transactions and whether at all there is any liability for the cheques issued, in the statutory notice/Ex.P10 there is no mention about any of the transactions and even the amount for which the cheques issued, the demand for that amount not made in the statutory notice. Once the foundational facts of the case falls, consequently entire case falls. The above case is under Section 138 of the Negotiable Instruments Act, wherein pre-conditions for initiation of the complaint, prosecution of the complaint, time line given. It is clear that a demand notice to be issued and the demand must be for the cheque amount. In this case Ex.P10, there is no reference to the cheque amount. Further the respondent had sent a

reply/Ex.P13 giving details about the transaction and cheques being collected by appellant's father only as security and liability discharged for all transactions. When the appellant admits that the transaction is only between the Duraisamy and respondent, the cheque ought to be in the name of Duraisamy and thereafter as legal heir after the death of Duraisamy the appellant could have continued with the prosecution and the liability would not automatically shift to the appellant and added to it, the appellant is not aware about any of the transaction between Duraisamy and the respondent. The appellant using Narayanasamy filed a complaint under Section 138 of the Negotiable Instruments Act in Dindugal Court, which at the instance of the respondent transferred to the file of learned Judicial Magistrate-VI, Coimbatore and taken on file in C.C.No.71 of 2009. The trial Court dismissed the complaint of Narayanasamy finding that the cheque projected by him is without any liability. Likewise though statutory notice was issued by Gnanavadivel Vijayarajan, Pollachi on a similar ground, on the reply of the respondent no further action taken and no complaint filed against him. He further submitted that on the dismissal of C.C.No.71 of 2009, the said Narayanasamy filed an appeal before this Court in Crl.A.No.39 of 2010, which was dismissed for non prosecution on 03.11.2014. The trial Court finding that the cheque projected by the appellant is only a security cheque, which was given to Duraisamy and the appellant is not aware of the transactions between the Duraisamy and respondent, and also taking into consideration the respondent's reply notice and defence witnesses and defence exhibits had rightly dismissed the complaint. He further submitted that it is a case of appeal against acquittal and this Court, as Appellate Court while considering the appeal against acquittal it would be proper to consider the view taken by the trial Court unless the findings are perverse, contrary to the evidence available in this case, it is not so, the trial Court had rendered a detailed judgment of acquittal.

7.Considering the submissions made and on perusal of the material, it is seen that in this case, the appellant projected a case that the respondent had issued a cheque/Ex.P7 in discharge of the liability to his father Duraisamy and to his mother Vasantha and the cheque/Ex.P7 is projected that it has been issued in discharge of liability for Rs.5,39,000/-. The pro-notes/Exs.P1 to P6 is in the name of appellant's father Duraisamy, which is now time barred. How this Rs.5,39,000/- liability arrived and whether the appellant was authorised to fill up the cheques in his name, no proper reason given. Further as could be seen from the statutory notice/Ex.P10, it is bereft of facts, there is no details about the transaction and what is the cheque amount. The respondent in his reply notice gave details and his categorical stand is cheques issued as security to Duraisamy for the loans taken by the persons referred by the respondent and to prove the same he had examined DW2, who confirms the same. Added to it, the respondent in the year 2003, had given stop payment letter to his bank, which is proved by DW1/Bank Manager. The respondent examined himself as DW3 and had given detailed explanation as to how these cheques were issued to Duraisamy, how loan amounts discharged and request for return of cheques and pro-notes also elaborated.

The appellant in this case admits that he stepped into the shoes of his father, after his death in the year 2004 and filed this complaint. The appellant is not aware what was the business transactions of his father and whether his father was an Income Tax Assessee and maintains any accounts. In such circumstances, merely stating that Exs.P1 to P6 is for Rs.3,00,000/- and another Rs.50,000/- and appellant's mother Vasantha had given loan, collected interest, later respondent failed to discharge his liability, the principal and interest of Rs.5,39,000/- is without any materials. The appellant's mother is very much available and she was not examined as witness.

8.The appellant is not sure about what was the transaction between Duraisamy and respondent and he is unable to give any details. Further the respondent disputed the cheque was issued in discharge of any liability, detailed in reply notice, further he examined himself as DW3. Hence, it is for the appellant to prove his case, which he failed. The respondent dislodged the statutory presumption and probabilised his defence. The trial Court on the evidence and materials had rendered a well reasoned judgment finding that the appellant had failed to prove his case, which is proper. Hence, this Court finds no reason to interfere with the well reasoned judgment of the trial Court.

9.In the result, the Criminal Appeal is dismissed.

09.04.2025

Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
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To

1.The Judicial Magistrate No.VI,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

**M.NIRMAL KUMAR, J.**

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