BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2025

DELIVERED ON : 25.03.2025

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.62 of 2022
and Crl.M.P.(MD).No.2512 of 2022

R.Jeyakumar ... Appellant/Respondent/Complainant

Vs.

R.Senthilkumar ... Respondent/Appellant/Accused

Prayer: Criminal Appeal has been preferred under Section 378 (2) Cr.P.C., to call for the records relating to the Judgment dated 21.12.2021 made in Crl.A.No.79 of 2019 on the file of Additional District and Sessions Court, Theni, reversing the order of conviction made in S.T.C.No.91 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court), Theni, dated 12.11.2019 and set aside the same as illegal.

For Appellant : Mr.R.Gandhi, Senior Counsel for
Mr.T.S.Mohamed Mohideen

For Respondent : Mr.V.Kathirvelu Senior Counsel for
Mr.E.Mareeskumar

JUDGMENT

This Criminal Appeal has been filed by the appellant to set aside the Judgment dated 21.12.2021 made in Crl.A.No.79 of 2019 on the file of

Additional District and Sessions Court, Theni, reversing the order of conviction made in S.T.C.No.91 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court), Theni, dated 12.11.2019 and set aside the same as illegal.

2.The facts in brief:

The accused for the purpose of development of his business borrowed a sum of Rs.45,00,000/- on 31.07.2015 from the complainant and promised to repay the same with 12% interest. On the date of borrowal a demand promissory note was executed. After that the accused did not return or repay the borrowed amount. Later to discharge the same, the accused issued a post dated cheque dated 07.09.2017 drawn on Canara Bank, Kankeyam Branch bearing No.683081 in the account bearing No.3129101000452.

3.On the date of issue of the cheque, the demand promissory note was closed and later the accused promised to pay the entire amount. Interest was written off in view of the consent letter executed by the accused on 31.07.2017. The cheque was presented for payment on 13.09.2017 through Axis Bank, Theni and prior to that the complainant issued a notice of information or intimation to the accused on 12.09.2017, expressing his intention to present the cheque for payment.

4.But, it came to be returned due to insufficient fund. Statutory notice was issued on 19.09.2017. It was served upon the accused. With this he filed the complaint.

5.At the time of trial, on the side of the complainant 3 witnesses were examined. 10 documents were marked. On the side of the accused 3 witnesses were examined and no documents marked.

6.At the conclusion of the trial the trial court recorded a finding of guilt accordingly, convicted and sentenced him to undergo 10 months simple imprisonment and pay compensation amount of Rs.45,00,000/- with interest at the rate of 9% within a month and in default ordered to under go two months simple imprisonment. Against which, the accused preferred an appeal before the appellate Court namely the Additional District Judge, Fast Track Court, Theni, in C.A.No.79 of 2019. The appellate Court differed from the view taken by the trial Court, allowed the appeal, set aside the conviction and sentence. Against which, this appeal is preferred.

7.After hearing both sides an enquiry was raised by this Court as to the maintainability of the appeal on the ground that since the appellate

Court reversed the finding of trial and passed an order of acquittal, whether appeal will lie. On that ground appellant was heard and it is brought to the notice of this Court that by exercising the power under Section 378 (4) Cr.P.C. the appellant filed Crl.O.P.(MD).No.2762 of 2022 and leave was granted to file the appeal.

8.So this appeal was heard along with Crl.A.(MD).No.58 of 2022 and common argument was advanced by the respondent in both the matters, since the accused is one and same, but the complainant are different. Crl.A.(MD).No.58 of 2022 is also disposed today by a separate judgment. Since the arguments advanced in both the matters are one and the same, we can straight away go to the issue.

9.Before we go into the complainant side arguments, we can take up the respondent's side arguments first. So that the discussion may proceed in proper manner.

10.The learned senior counsel appearing for the respondent would submit that in both the matters namely Crl.A.(MD).No.58 of 2022 and this appeal namely Crl.A.(MD).No.62 of 2022, Ex.P3 was written and attested by the same person namely Murugesan PW3. In Crl.A.(MD).No.58 of 2022 also Murugesan wrote the document and signed as attesting witness; Murugesan was employed with the accused; Due to some misappropriation of the business money, he was removed from the employment. Therefore, take vengeance, along with the complainant, Ex.P3 was written in both the matters by him.

11.The very same defence of stealthily removing the disputed cheque from the office of the accused was taken in this matter also. But, this contention is rejected by the trial Court stating that no substantial evidence is available to show that PW3 Murugesan was removed from employment by the accused and to wreck vengeance he created Ex.P3. Simply because in both the matters the scribe is the one and same person no inference can be drawn to the effect that Ex.P3 is a created document.

12.With this we will go to the other aspects. PW1 would say that on 31.07.2015, the accused, for the purpose of developing his business, borrowed a sum of Rs.45,00,000/- and executed Demand Promissory Note Ex.P1. Towards the discharge of the loan he issued the disputed cheque on the date of Ex.P3 viz., 31.07.2017, but, by post dated to 07.09.2017. The interest amount was waived at the request made by the accused. On 31.07.2017, Ex.P3 was written. On that date, pronote was cancelled.

13.Now the accused would say that through PW3, the signed cheque was taken out from his office and case has been foisted. Ex.P3 never came into existence. It was created document. But, cheque number is mentioned, which is corresponding to the accused's account. But like the mistake committed in Crl.A.(MD).No.58 of 2022, here also mistake is committed with reference to the Bank name. This aspect was also considered in Crl.A.(MD).No.58 of 2022. The mistake committed while executing Ex.P3 was taken into account by the appellate Court for reversing the judgment of conviction passed by the trial Court.

14.When the accused does not deny the signature in the disputed cheque, naturally presumption under Section 139 of the Negotiable Instruments Act come into operation in. When the foundational basic facts are brought on record by the complainant, automatically presumption under Section 139 of the Negotiable Instruments Act come into operation. Then, it is for the accused to rebut the presumption either directly or by circumstantial evidence. As mentioned above, the only defence taken by the respondent is enmity with PW3. But, as mentioned above, that enmity was not properly established by the respondent herein. Now during the course of the cross examination of PW1, the financial capacity of the complainant to lend such a huge amount was put. It is admitted by the accused himself during the course of cross examination of PW1 that the complainant is Advocate by profession. Apart from that he is also having agricultural lands. When that is so, the financial capacity of the complainant to lend such a huge amount cannot be doubted. It was his evidence that he visited the accused house during the certain function days. So this itself indicates that the complainant and accused were known to each other and family friends even prior to the transaction. Even he went to the extend of saying that in his income tax statement, he has shown the cheque issued by the accused. So I find absolutely, no reason to suspect the transaction.

15.Regarding Ex.P3 as mentioned above and as observed in Crl.A.(MD).No.58 of 2022 a mistake with reference to the name of the Bank, which need not be given any importance at all. Since the account number and cheque number squarely tallies with the documents now produced. So I find that the accused has not rebutted the presumption successfully. But, the complainant has brought on record the relevant circumstances indicating the genuineness of the transaction.

16.We can verify the genuineness of the transaction from another angle also. It is the case of the accused that the complainant, the accused and one Murugan, who is the complainant in Crl.A.(MD).No.58 of 2022 were doing money lending business. Later some difference of opinion arose between them. So they separated. It is the fact put to PW3 during cross examination by the accused.

17.So this plea itself does indicate that there is a possibility of money transaction between the complainant and the accused. For same reason, it appears that difference of opinion arose between the complainant in both the matters and the accused. So in that occasion the present disputed cheque and Ex.P3 came into existence.

18.So I find absolutely no reason to doubt the transaction. The well considered judgment of conviction passed by the trial Court was interfered by the appellate Court without appreciating the facts in a proper manner. So the appeal is liable to be allowed.

19.Accordingly, this criminal appeal is allowed. The judgment of the acquittal passed by the first appellate Court is hereby set aside and the Judgment of conviction passed by the trial Court is hereby confirmed. The accused shall be secured to serve the remaining sentence period, if any. The accused shall pay the compensation amount as directed by the trial Court, if not paid. Consequently, connected miscellaneous petition is closed.

25.03.2025

NCC: Yes/No
Index:Yes/No
Internet:Yes/No
TM

To

1.The Additional District and Sessions Judge, (Fast Track Court), Theni.

2.The Judicial Magistrate, (Fast Track Court), Theni.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN, J

TM

Crl.A.(MD).No.62 of 2022

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