

**(2017) 09 MAD CK 0014**

**MADRAS HIGH COURT**

**Case No:** 312 of 2016

K.Muniraju

APPELLANT

Vs

G.Murugesh

RESPONDENT

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**Date of Decision:** Sept. 22, 2017

**Acts Referred:**

- Negotiable Instruments Act, 1881, Section 138, Section 139, Section 118 - Dishonour of cheque for insufficiency, etc., of funds in the account - Presumption in favour of h

**Hon'ble Judges:** N.Authinathan

**Bench:** SINGLE BENCH

**Advocate:** N.Authinathan

**Final Decision:** Dismissed

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### **Judgement**

1. The complainant in S.T.C.No.254 of 2014 on the file of the Judicial Magistrate, (Fast Track Court), Hosur, is the appellant herein. He has filed

the complaint for the offence under Section 138 of Negotiable Instruments Act. It is alleged in the complaint that the respondent had borrowed

Rs.6,00,000/- on 04.05.2012 and agreed to repay the same in two years. He agreed to pay interest at the rate of Rs.1 % per month on or before

10th of every English calendar month. He had executed a Mortgage Deed and handed over 4 blank cheques [bearing Nos.055682, 055683,

055684 and 055685 drawn on Central Bank of India, Hosur Branch] as security.

2. On 03.05.2014, the respondent paid Rs.60,000/- and received back the said 4 cheques. He had issued a cheque dated 25.06.2014 for

Rs.5,40,000/-. The cheque when presented for collection, returned citing ""funds insufficient"". Thereafter, the respondent paid Rs.40,000/- and

received back the said cheque and issued another cheque dated 20.07.2014 for Rs.5,00,000/-.

3. On 19.07.2014, on the basis of the complaint lodged by the wife of the respondent, the Police Officials summoned the complainant and after

enquiry, the respondent agreed to pay the cheque amount. However, when the cheque was presented, the cheque was returned with remarks

insufficient funds"" on 16.08.2014. Thereafter, the cheque was represented for collection twice. However, the respondent has not made

arrangements for payment. The complainant called upon the respondent to repay the amount covered by the cheque by a notice dated

25.10.2014. The respondent refused to receive the notice and also not repaid the amount. Hence, the complaint.

4. In support of the case of the complainant, he examined himself as P.W.1 and another 3 witnesses and marked 10 documents. The respondent

examined himself as D.W.1 and 2 other witnesses and marked 4 documents.

5. The defence of the respondent is that, he has received Rs.1,00,000/- from the complainant and at the time of taking the loan, the complainant

obtained bond papers and two unfilled cheques. He has repaid the loan at the rate of Rs.20,000/- per month and the amount was paid to the

account and asked for return of the documents handed over to him at the time of taking loan. The complainant though promised to return the

documents, misused those documents and filed the present case.

6. The Trial Court accepted the plea of the respondent and acquitted him holding that, the complainant has failed to prove his case beyond any

reasonable doubt. Challenging the order of acquittal, the present Appeal has been filed.

7. It is not in dispute that the cheque belongs to the respondent and it bears the signature of the respondent. Therefore, it is to be presumed that the

cheque was issued for discharge of legally enforceable debt in terms of Section 139 of Negotiable Instruments Act. It is for the respondent to

discharge the initial burden. He has to rebut the presumption drawn against him. The respondent can discharge his burden on the basis of the

materials available on record. In K.PRAKASHAN vs. P.K.SURENDERAN [(2008) 1 SCC 258], the Hon"ble Supreme Court has held thus;

that standard of proof in discharge of the burden in terms of Section 139 of the Act being of preponderance of a probability, the inference therefor

can be drawn not only from the materials brought on record but also from the reference to the circumstances upon which the accused relies.

8. Bearing in mind, the dictum laid down by the Hon"ble Supreme Court, I have carefully perused the materials. It is the case of the respondent

that, the complainant is a moneylender and he has borrowed Rs.1,00,000/- from the complainant and at the time of taking loan, the complainant

obtained unfilled cheques and signed bond papers. The complainant claims that the respondent has borrowed Rs.6,00,000/- from him on

04.05.2012.

9. According to the complainant, the respondent executed Mortgage deed [Ex.P.9] and also handed over 4 blank cheques [bearing numbers

055682, 055683, 055684 and 055685 drawn on Central Bank]. Therefore, it is clear that the complainant took blank cheques from the

borrower. The complainant produced Mortgage Deed [Ex.P.9] dated 04.05.2012. P.W.1 to P.W.3 are Attestors to this Deed. The recitals are in

Tamil. However, P.W.1 to P.W.3 have admitted that they cannot read and write in Tamil. This document bears the signature of the wife of the

respondent. She was examined as D.W.3. On oath, she has asserted that at the time of taking loan of Rs.1,00,000/-, she signed unfilled papers at

the behest of the complainant. It is a unregistered Deed. In these circumstances, no importance can be given to the complainant.

10. The complainant has admitted that she lodged a complaint with the Police against him (complainant) and his men and he was summoned by the

Police on 19.07.2014. Therefore, the defence of the respondent cannot be discredited on the ground that, he has failed to send any reply to the

notice sent by the complainant. The cheque in question was initially presented for collection on 14.08.2014. Again, it was presented for collection

on 15.09.2014 and thereafter, presented on 16.10.2014. It is impossible to believe the case of the complainant that, after police complaint the

respondent agreed to make payment.

11. The complainant has claimed that he has paid Rs.6,00,000/- on 04.05.2012 in cash. In KRISHNA JANARDHAN BHAT vs.

DATTATRAYA G. HEGDE [(2008) 4 SCC 54], the Hon"ble Supreme Court has held thus: ""Courts have to take notice that ordinarily in terms of Section 269-SS. Income Tax Act, any advance taken by way of loan of more than Rs.20,000/- had to be made by an account payee cheque only"".

12. The complaint in his evidence has stated that he charged Rs.6,000/- as interest for the loan. He would also admit in his evidence that the respondent remitted money to his Bank Account. However, he claims those amounts were paid towards interest. He claims that he owned two lorries and a Fancy Store. However, he has not produced any account to show that the actual amount received by him from the respondent.

13. A careful perusal of the cheque would also show that the ink used to write the contents of the cheque is different from the ink used in the signature on the cheque. The Trial Court has also taken note of the said fact.

14. The above mentioned circumstances, in my considered view, are sufficient to hold that the respondent has rebutted the presumption drawn against him in terms of Sections 118 and 139 of Negotiable Instruments Act.

15. After the rebuttal of presumption by the respondent, it is for the complainant to prove his case that, the cheque was issued to discharge the legally enforceable liability. Except, the disputed cheque and the interested oral testimony of the complainant, there is no other dependable evidence to show that the complainant lent Rs.13,00,000/- and the cheque in question was issued in partial discharge for the said liability.

16. The present Appeal is against the order of acquittal. It is well settled that the Appellate Court should not interfere with an order of acquittal unless it finds that the view taken by the Trial court is perverse. In the case at hand, as the Trial Court has taken a reasonably possible view.

Having regard to the evidence and circumstances, I hold that the Trial Court was justified in acquitting the accused. I do not find any ground to hold a different view. The Appeal is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the learned Judicial Magistrate (Fast Track Court), Hosur, in S.T.C.No.254 of 2014 on 13.08.2015 is hereby confirmed.