

IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE, NAMAKKAL

Present: Thiru K. H. Elavazhagan, B.Sc., M.L.,
Principal Sessions Judge, Namakkal.

Wednesday, the 25th day of April 2018

CRIMINAL APPEAL NO.1/2017

From what court the appeal is preferred	:	Judicial Magistrate (Fast Track Court), Tiruchengode.
Number of the case in that court	:	S.T.C No. 38/2016
Name and Description of the appellant	:	V. Gowthaman, (54) S/O. S. Vadivel, Working at Chief Office Superintendent, Office of the Deputy Chief Material Manager, Carriage works, Perambur.
Name of the Complainant	:	Private complaint 1. V.S. Sathishkumar, (35) S/o. Subramanian, 3/432, Bali Kattur, VEDIYARASAMPALAYAM, Pallipalayam Agraharam Post, Erode. 2. Public Prosecutor, Namakkal.
The sentence and law under which it was imposed in the lower court	:	The accused is found guilty u/s.138 N.I.Act. The accused found guilty u/s.138 of N.I. Act , convicted and sentenced to undergo six months Simple imprisonment and to pay a fine of Rs.5,000/- in default one month simple imprisonment.
Whether confirmed, modified or reversed and if modified modification	:	In the result, the appeal is dismissed thereby confirming the judgment of conviction of the accused in STC.No

38/2016 dated 30.09.2016 on the file of the Judicial Magistrate (FTC) Tiruchengode and the bail bonds given by the appellant / accused stands dismissed. The Judicial Magistrate (FTC) Tiruchengode is directed to execute the warrant of conviction.

Date of filing	26.10.2016
Date of notice issued by that court to appear :	03.01.2017
Date of bail bond if the appellant has been let out on bail :	04.01.2017
Date of the appellant ordered to appear :	30.1.2017
Date of hearing :	14.12.2017
Date of judgment/ order :	16.04.2018

This criminal appeal is coming on 14.12.2017 for final hearing before me in the presence of Thiru R. Ramesh, Advocate for the appellant/accused and of Tmt. T. Madhumathi, Advocate for the respondent and when the appeal was posted for the arguments of the respondent from 6.10.2017 to 14.12.2017, there was no representation for all the hearings and hence, on hearing the arguments of appellant side and upon perusing the judgment of the trial court and the case records and having stood over till this day for consideration, this court delivered the following:

JUDGMENT

The Criminal Appeal is filed u/s. 374 of Cr.P.C against the judgment of conviction and sentence passed by the Fast Track Judicial Magistrate, Tiruchengode in S.T.C.38/2016 dated 30.09.2016 and to set aside the same.

2. The case was registered against the accused u/s 138 Negotiable Instrument Act, in STC 38/2016, dated 30.09.2016 convicting the accused to undergo S.I. for six months and fine of Rs.5,000/- in default of fine to undergo one month Simple

imprisonment u/s.138 N.I. Act.

3. On 19.03.2015 the accused borrowed a sum of Rs.3,00,000/- (Rupees three lakhs only) from the complainant for his urgent needs. The accused promised to repay the aforesaid amount within 3 months. The accused also paid agreed interest for the said amount in advance. To discharge the said liability, the accused issued the following post dated cheque to the complainant.

<u>S.No.</u>	<u>Date</u>	<u>Cheque No.</u>	<u>Drawn on</u>	<u>Amount</u>
1.	22.06.2015	519849	State Bank of India, Arakkonam, Vellore -1	Rs.3,00,000-00

As per the request of the accused, the complainant presented the above said cheque for collection on 22.06.2015 through his bank namely State Bank of India, Pallipalayam Branch. To shock and surprise of the complainant, the aforesaid cheque was returned on 24.06.2015 with bank memo endorsing as "Funds Insufficient" in the accused's account. Without sufficient funds in the accused's account he has issued the aforesaid cheque in order to defeat and delay the complainant's lawful claim and thereby the accused has committed an offence punishable u/s 138 of Negotiable Instrument Act. Thereafter, on 07.07.2015 the complainant issued lawyer's notice to the accused for demanding payment within 15 days from the date of receipt of this notice. The accused received on 15.07.2015. Thereafter the accused did not issue reply notice and settle cheque amount. Hence, this complaint.

The complaint was taken into cognizance and during trial complainant examined witnesses PW1 and marked documents Ex.P.1 to Ex.P.6 and no witness was examined and no documents were marked on the defence side. On consideration of the evidences and documents and materials on record, the learned Judicial Magistrate (FTC) Tiruchengode, convicted and sentenced the accused, to undergo simple imprisonment for a period of 6 months and imposed fine sum of Rs.5,000/- in default of payment of fine to undergo simple imprisonment for one month u/s 138 Negotiable Instrument Act in S.T.C. No.38/2014, dt. 30.09.2016.

4. Having been aggrieved against the judgment of conviction and sentence passed by the learned Fast Track Judicial Magistrate, Tiruchengode in S.T.C.38/2016 dt. 30.09.2016 the accused preferred this appeal on the following grounds: -

The Judgment of the trial court is against law, weight of evidence and all probabilities of the case.

The trial court ought to have held that the complainant has not proved the case and acquit the appellant.

The trial court failed to note that the complainant failed to prove that the consideration was passed for the said case cheque. To bring home the guilty of the accused u/s 138 of NI Act. The complainant is bound to discharge the initial burden cost upon him that the cheque was given by the accused in discharge of a legally enforceable liability.

The appellant therefore prays that this Honourable court may be pleased to allow the appeal and set aside the judgment and conviction and sentenced S.I. for six months fine a sum of Rs.5,000/- passed by the Fast Track Judicial Magistrate, Tiruchengode in STC.No.38/2016, dated 30.09.2016. In default the Simple imprisonment for one month.

5. On consideration of the complaint, evidence and other materials on record, the point arise for determination is are as follows:-

1. Whether the respondent/complainant fulfilled the statutory need for lodging the complaint against the accused as contemplated u/s 138 of N.I Act ?
2. Whether the appellant/accused has rebutted the presumption under 114 of Evidence Act and u/s 118 and u/s 139 of N.I. Act?
3. Whether the appellant has signed the cheque?
4. Whether the appeal can be allowed?

6. Answering for Point 1 :

The Section 138 N.I Act contemplates as follows:-

a) The cheque has been presented to the bank within a period of six months from the date on which it was drawn or within the period of its validity, whichever is earlier.

- b) The Payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and*
- c) the drawer of such cheque failed to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

The following table goes to show the various dates from the date of issuance of cheque and till the date of complaint to prove the legal requirements as stated above.

Dt.of cheques	Dt.when presented for collection u/s 138 (a) of NI Act	Dt of receipt of intimation from the bank as to the dishonour of cheque u/s 138(b) of NI Act	Dt. when issued legal notice to the accused	Dt.when the accused get receipt of notice	Dt when the expiry of 15 days of receipt of notice as per Sec 138 (c) NI Act.	Dt when the cognizance of offence made u/s 142(b) of NI Act.
22.06.2015	22.06.2015	24.06.2016	07.07.2015	15.07.2015	30.07.2015	18.08.2015

In this case on hand, the accused had given post dated cheques 1) dated 22.06.2015 bearing cheque No. 519849 drawn on SBI Bank, Arokkanam, Velur Branch for a sum of Rs.3,00,000/- in favour of the complainant to discharge the above said loan liability a legally enforceable pre existing debt. But after that the accused had not paid any interest to the complainant. The cheque was presented for collection by the complainant on 22.06.2015. The above said cheque was returned on 24.06.2016 on insufficient funds. Then he issued legal notice to the accused on 07.07.2015 to pay the amount within 15 days from the date of receipt of the notice. The said notice was not received by the accused on 15.07.2015, but he did not given any reply.

Then the Complainant had filed the present case on 18.08.2015. The statutory demand notice was given within 30 days, after expiry of 15 days from the date of receipt of notice, the present case was filed within 30 days. Therefore, the statutory need for lodging

complaint against the accused is fulfilled by the complainant u/s.138 of NI Act. So, there is no legal infirmity in the present case. I answered to this Point No.1 accordingly.

7. Answering for Points 2 and 3

The appellant herein has filed the appeal against the judgment in STC 38/2016 dt 30.09.2016 on the file of the Judicial Magistrate, (FTC) Tiruchengode.

For the convenience the parties nomenclature has used as before the trial court.

The complainant was examined as PW 1 and Ex.P.1 to Ex.P.6 were marked on the side of the complainant. No witnesses were examined on the side of the accused/appellant herein and no document was marked.

The documents Ex.P.1 goes to show that the accused has presented post dated cheque on 22.06.2015 bearing cheque No. 519849 drawn on SBI Bank, Arokkanam, Velur branch for a sum of Rs.3,00,000/- in favour of the complainant to discharge the above said loan liability a legally enforceable pre existing debt. Ex.P. 2 is the collection memo dt 22.06.2015 and Ex.P.3 goes to show that cheque Ex.P.1 was returned for funds insufficient in the account of the accused, by the complainant bank on 24.06.2015. Ex.P.4 goes to show that the complainant has sent legal notice to the appellant herein on 07.07.2015 demanding to pay cheque amount within 15 days from the date of the receipt. Ex.P.5 goes to show that the accused has received the cover on 07.07.2015. Furthermore, Section 139 of the Negotiable Instrument Act and Section 118 of the Evidence Act, goes that presumption is in favour of the holder in cheque.

Section 139 reads as follows:

139. Presumption in favour of holder:

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.

From the above, it is clear that it is presumed that unless contrary is proved the holder of a cheque received for the discharge of liability.

After going through the materials available on record, it is seen that it is not in dispute that Ex.P1 is cheque leaf supplied by the bank to the petitioner/accused in respect of the account he was maintaining with the banker, namely the SBI Bank, Arokkanan, Velur Branch. It is also not in dispute that the signature found therein is that of the

petitioner/accused. Further, it is seen that the accused has not even cross examined the PW1. It is seen that by the evidence of PW 1 and other materials on record, it is crystal clear that the cheque leaf supplied by the bank to the accused in respect of the account maintained with his banker. Hence there is nothing wrong in the finding of the Courts below that the respondent/complainant has proved that the cheque was issued by the petitioner/accused from the respondent/complainant. towards legally enforceable debt.

In this case, the appellant has not examined either himself or any of the witnesses on his side to prove his case nor he rebutted the presumption under section 139 of N.I.Act. It is seen that by the evidence of PW 1, and other materials on record, the signature of the cheque is that of the accused only. To rebut the same, the accused did not come forward.

In this regard, I remind the principles laid down in ***Authority, 2010(4) CTC page 118 S.C in the case Rangappa Vs Sri Mohan, the relelvt portion para 14 to 15, is runs as, Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 &139 . The Honourable Apex Court has held that the presumption under Section 139 , includes existence of a legally enforceable debt or liability. When an accused has to rebut Presumption under Section 139, standard of proof for doing so, is that of preponderance of probabilities. The Complaint discloses existence of a legally enforceable debt and Accused admitted her signature in cheque, then the Statutory presumption comes into play and same has not been rebutted.***

It is seen that in this case, it is established that the signature in the cheque in Ex.P.1 is that of the signature of the accused only. As already stated and also by the principles, laid down by the Lordship, presumption u/s.139 of N.I Act can be taken into consideration and it is for the accused to place the materials to rebut the presumption. The law is well settled that the accused can also rely upon the circumstances and materials placed by the complainant to rebut the presumption.

Further, the ***Sec 20 of Negotiable Instrument Act reads as below:***

“Inchoate stamped instruments- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable Instrument then in force in”(India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority

to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under."

In the decision reported in 2008 (1 CTC 491) at page 494, it has been held that though section 20 of the Negotiable Instruments Act does not appear to cover a case of a blank cheque, there is no specific bar in the Act for a cheque to be filled up by any person other than the drawer. The payee or holder in due course, has authority to fill up the blanks in the cheque and such instrument is valid in law.

"Under section 20 of the Negotiable Instruments Act, a person who signed a blank stamped paper relating to a negotiable instrument is made liable upon such instrument in the capacity in which he signed it to any holder in due course."

"The instrument may be wholly blank or incomplete in any particular, in either case, the holder has the authority to make or complete the instrument as a negotiable one."

"Bills and notes are often executed with the name of the payee left in blank to be afterwards filled by actual holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an indorser and any bonafide holder for value may fill it up, with his own name and sue upon it."

While so, as discussed above, in the EXP 1 cheque herein the name of the complainant i.c.K.P. Arunachalam only shown as payee.

Even if it is taken for consideration that the accused herein has executed the EXP 1 cheque herein with the names of the payee left in blank to be afterwards filled, then it enables the bonafide holder for value to fill it up, and the person who signed a blank cheque i.c.the accused is made liable upon such instrument in the capacity in which she signed it to any holder in due course, as per sec.20 of Negotiable Instruments Act, as discussed above.

In the decision reported in 2012 (2) MWN (Cr.) (DCC) 33 (SC), the division

bench of our Hon'ble apex court in para 18 held as below:

“We may also refer to the Judgment delivered by this court in the case, ICDS ltd., V.Beena Shabeer and Anr.2002 (2) MWN (Cr.) DCC 68 (SC). In the said judgment this court has referred to the nature of liability which is incurred by the one who is a drawer of the cheque. If the cheque is given towards any liability or debt which might have been incurred even by someone else, the person who is a drawer of the cheque can be made liable under section 138 of the Act.

However, in this case, it is not in dispute that Ex.P.1 is the cheque leaf supplied by the bank to the accused in respect of the account maintained with its banker and the signature therein is that of the accused. Further, I am having cursory reading of the judgment of the trial court, it is seen that the trial court very clearly discussed the fact that the accused has not been adduced sufficient evidence to prove that the cheque was not issued for any consideration and it was forged and misused.

Further in this regard, it is established in many cases as, it is for the accused to explain his case and defend it, once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations, once a prima facie case is made out by the complainant.

Apart from this, the accused, inspite of receipt of notice, never replied nor paid back the said amount, which shows his intention to cheat the complainant.

With this regard, I remind the Principal laid down in 2009(1) CTC 361 in P.Arumugam Vs P.Velusamy in which it is held as, if the accused did not take care to send a reply setting out the defence he has raised in his case before trial court, only in the said circumstances, the Courts below have come to the conclusion that the complaint allegations made against the accused that he committed an offence punishable under section 138 of the Negotiable Instruments Act stood proved.

With this background I have perused the evidence, documents and materials on record. But, as already stated above, I find no materials or circumstances, placed before me to believe the version of the appellant/ accused, in other words, the accused would not response for it, by way of giving reply notice.

I have perused, the evidences and documents and the materials on record. In this case, the appellant/ accused has not examined any of the witnesses on his side. It is seen

that, the accused during 313 questioning, replies as, simply denied the issuance of the cheque and false case has been foisted against him. Further, it is seen that, the complainant, issued notice, about the return of cheques, but the accused, has evaded the same. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the complainant. That by itself proved the fact, that the accused has to owe some amount to the complainant and he was being in debt with the complainant and further, the accused had failed to prove in what way, the cheques of the accused gone into the hands of the complainant by way of evidences and documents. Further it is seen that the appellant/accused had failed to reply to the statutory notice under section 138 of the Act which leads to the inference that there was merit in the complainant's case.

Taking into consideration of all the materials on record, I am of the view that there is no materials placed before this court to prove the contention of the appellant/accused.

Hence, I hold that the appellant herein has not adduced any evidence as to rebut the presumption. Hence, I hold that the appellant has committed the offence u/s 138 of Negotiable Instrument Act. Hence, I find no reason to interfere with the judgment of the trial court dt 30.09.2016 in STC38/2016.

In the result, the appeal is dismissed thereby confirming the judgment of conviction of the accused in STC.No 38/2016 dated 30.09.2016 on the file of the Judicial Magistrate (FTC) Tiruchengode and the bail bonds given by the appellant / accused stands dismissed. The Judicial Magistrate (FTC) Tiruchengode is directed to execute the warrant of conviction.

Dictated to the steno-typist, directly typed by her on computer, corrected and pronounced by me in the open court on this the 25th day of April 2018.

Sd/- Thiru K.H.Elavazhagan

Principal Sessions Judge,
Namakkal.

/ True copy/

PRINCIPAL DISTRICT COURT,
NAMAKKAL

FAIR/DRAFT/COPY OF

JUDGMENT

IN

C.A 1/2017

Dt.25.04.2018

C.A 1/2017
Dt. 25.04.2018

Judgment is pronounced in the open court.

In the result, the appeal is dismissed thereby confirming the judgment of conviction of the accused in STC.No 38/2016 dated 30.09.2016 on the file of the Judicial Magistrate (FTC) Tiruchengode and the bail bonds given by the appellant / accused stands dismissed. The Judicial Magistrate (FTC) Tiruchengode is directed to execute the warrant of conviction.

PSJ, Namakkal.

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