

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :30.03.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.364, 365 and 369 of 2009

C.R.Muthukumar .. Appellant in all Crl.As
/versus/

R.Savithiri ... Respondent in all Crl.As

Crl.A.No.364 of 2009: Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the judgment passed in Crl.A.No.356 of 2008 on the file of the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore dated 30.01.2009 reversing the judgment passed in S.T.C.No.1217 of 2007 on the file of the Judicial Magistrate No.VII, Coimbatore dated 29.09.2008.

Crl.A.No.365 of 2009: Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the judgment passed in Crl.A.No.354 of 2008 on the file of the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore dated 30.01.2009 reversing the judgment passed in S.T.C.No.3561 of 2006 on the file of the Judicial Magistrate No.VII, Coimbatore dated 29.09.2008.

Crl.A.No.369 of 2009: Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the judgment passed in Crl.A.No.355 of 2008 on the file of the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore dated 30.01.2009 reversing the judgment passed in S.T.C.No.621 of 2007 on the file of the Judicial Magistrate No.VII, Coimbatore dated 29.09.2008.

For Appellant in all Crl.As : No appearance

For Respondent in all Crl.As : No appearance

COMMON JUDGMENT

These three appeals are arising out of three private complaints initiated by the appellant herein against the respondent due to dishonouring of the cheques given by her.

2. CrI.A.No.364/2009 has been filed against the order of acquittal passed by the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore in C.A.No.356 of 2008, dated 30.01.2009 arising from the first complaint in S.T.C.No.1217 of 2007 on the file of Judicial Magistrate No.VII, Coimbatore in respect of the following two cheques:

Sl.No.	Date	Cheque No.	Amount Rs.
1.	01.01.2007	947817	Rs.40,000/-
2.	01.02.2007	947818	Rs.40,000/-

When both the cheques were presented for collection on 12.02.2007, the same were returned with an endorsement "insufficient funds". Hence, notice was issued on 22.02.2007 to the accused and thereafter, the complaint was lodged.

3. CrI.A.No.365/2009 has been filed against the order of acquittal passed by the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore in C.A.No.354 of 2008, dated 30.01.2009 arising from the second complaint in S.T.C.No.3561 of 2006 on the file of Judicial Magistrate No.VII, Coimbatore in respect of the following seven cheques:

Sl.No.	Date	Cheque No.	Amount Rs.
1.	01.01.2006	947805	40,000/-
2.	01.02.2006	947806	40,000/-
3.	01.03.2006	947807	40,000/-
4.	01.04.2006	947808	40,000/-
5.	01.04.2006	947809	40,000/-
6.	01.06.2006	947810	40,000/-
7.	01.07.2006	947811	40,000/-

Out of the above seven cheques, six cheques were presented on 28.06.2006 for collection and the same were returned with the endorsement "insufficient funds". The seventh cheque bearing No.947822 was presented on 01.07.2006 for collection and the same was returned with an endorsement "insufficient funds" on 05.07.2006. Hence, the complaint was lodged.

4. Crl.A.No.369/2009 has been filed against the order of acquittal passed by the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore in C.A.No.355 of 2008, dated 30.01.2009 arising from the third complaint in S.T.C.No.621 of 2007 on the file of Judicial Magistrate No.VII, Coimbatore in respect of the following five cheques:

Sl.No.	Date	Cheque No.	Amount Rs.
1.	01.08.2006	947812	40,000/-
2.	01.09.2006	947813	40,000/-
3.	01.10.2006	947814	40,000/-
4.	01.11.2006	947815	40,000/-
5.	01.12.2006	947816	40,000/-

The above said cheques were presented for collection on 22.12.2006 and the same were returned with the endorsement as "insufficient funds" on 23.12.2006. After issuing statutory notice on 27.12.2006, the complaint was lodged by the complainant.

5. The contention of the complainant is that Ramu, who is the husband of the accused executed a pro-note for Rs.7,80,000/-, but agreed to repay the debt in instalments. Pursuant to that, the cheques under consideration were given to the complainant. The cheques were drawn from the account of the accused, who is the wife of Ramu. It is also the contention of the complainant that the accused and her husband are running a business in the name and style of Shree Kavitha Equipments. For construction of house and development of their business, a sum of Rs.12,25,000/- was initially borrowed by the husband of the accused. To discharge the loan, the cheques for Rs.7,80,000/- and Rs.4,45,000/- were issued by the accused. When the cheques were returned as unpaid, notice was issued and thereafter, there was negotiation between the parties. As a consequence, the accused agreed to settle the due in 18 instalments (each installment of Rs.40,000/-) and gave 18 cheques which are the subject matter of the complaint.

6. The accused had taken a defence that the unfilled signed cheques were missing from his premises and the same have been misused by the complainant and the police complaint was also lodged by her regarding the missing of cheques and pro-note. Though the complainant agreed to return back the signed cheques and pro-note under the guise of compromise talk at RHR Hotel, with the help of unknown person and a person calling himself as Sathai Bagyaraj, Chennai, under threat, 19 cheques signed by his wife were obtained, there was also threat over

phone to pay Rs.1,00,000/- for the compromise as charged by Sathai Bagyaraj. Hence, he gave a complaint to the Commissioner of Police [Ex.D2]. Thus, the plea that the cheques were not issued for any legally enforceable debt but obtained under threat by the complainant and the fact was brought to the notice to the police. However, the trial Court has declined to accept the defence and held the accused guilty and convicted.

7. On appeal the lower appellate Court considering the police complaint Ex.D1 and Ex.D2 reporting about the theft of the subject cheques and forceful extraction of the cheques, held that the accused has discharged the burden by preponderance of probability and therefore, the presumption under Section 139 of Negotiable Instruments Act has been discharged by the accused, whereas, the complainant has failed to prove that there was any enforceable debt payable by the accused. Taking note of the fact that the cheques were given by the accused as proprietor of Sri Lakshmi Industries and the contention of complainant is that Ramu, who is the husband of the accused initially borrowed Rs.12,25,000/- on 26.07.2003 and to discharge the said debt, Ramu gave two cheques on 10.06.2005 and the same were bounced. So there was a peace talk between the complainant and the accused leading to issuance of 18 cheques each Rs.40,000/- by the accused, who is the wife of Ramu. Original pro-note alleged to have been issued by Ramu was not marked. Only the photo copy of it was filed. Further, the execution of the pro-note has also not been proved by the complainant by examining the witnesses to the pro-note. Earlier the complainant has initiated proceedings under Section 138 of Negotiable Instruments Act and same was withdrawn by him. There was also some agreement between the parties and deed has been executed. Then, again it was not the original, but copy of the deed of compromise dated 01.08.2008. Only pursuant to this deed, the subject cheques were obtained.

8. So, on a cumulative reading of the compromise deed as well as the complaint given to the police as early as July 2005 and August 2006, the lower appellate Court has rightly held that there is a disputed fact regarding the liability and issuance of cheques. While the accused has given complaint about missing of cheques and obtaining cheques under fear, the burden of proof is discharged by the accused. The complainant ought to have produced substantive evidence to prove the debt and mere holding the signed cheques, which are disputed, have not obtained for discharge of any debt but under force leads to discharge of reverse burden.

9. In such circumstances, this Court finds no reason to interfere with the finding of the lower appellate Court. Hence these appeal are liable to be dismissed.

10. Accordingly, these Criminal Appeals are dismissed. The judgments passed by the Additional District and Sessions Judge, F.T.C.No.2, Coimbatore in Crl.A.Nos.354 to 356 of 2008, dated 30.01.2009 is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ari/rpl

To

1.The Additional District and Sessions Judge,
Fast Track Court No.II,
Coimbatore

2.The Judicial Magistrate No.VII,
Coimbatore.

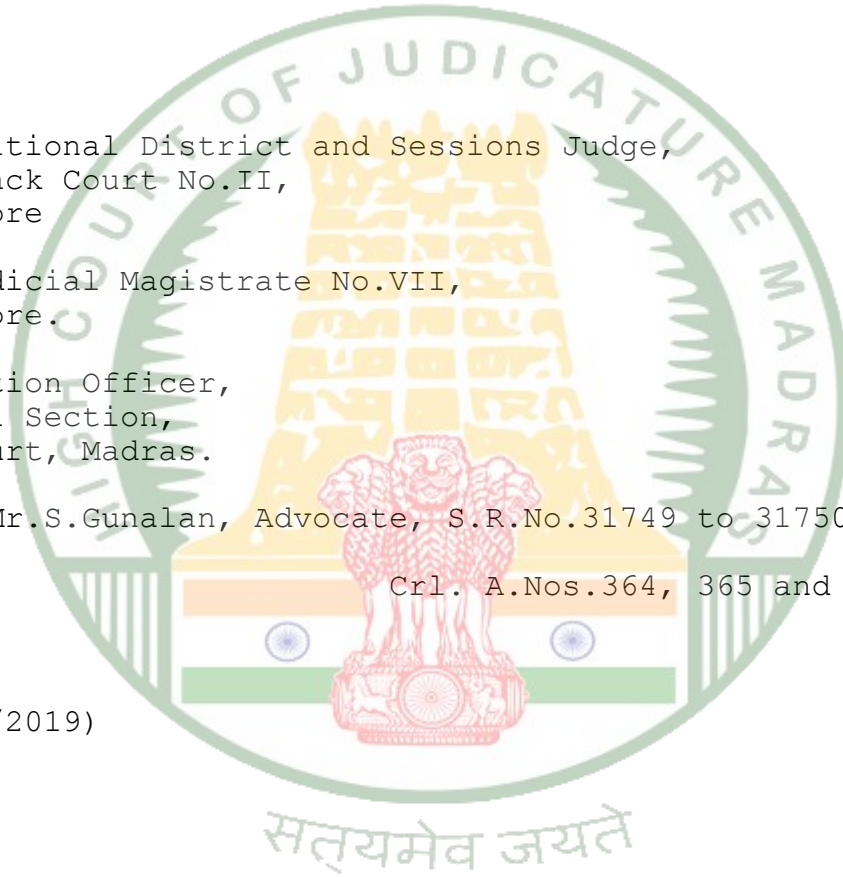
3.The Section Officer,
Criminal Section,
High Court, Madras.

+3ccs to Mr.S.Gunalan, Advocate, S.R.No.31749 to 31750

Crl. A.Nos.364, 365 and 369 of 2009

AK(CO)

RRS (27/05/2019)



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