T.P. MURUGAN (DEAD) THR. LRS. A

v.

BOJAN

AND

POSA NANDHI REP. THR. POA HOLDER, T.P. MURUGAN B

v.

BOJAN

(Criminal Appeal Nos. 950-951 of 2018)

JULY 31, 2018 C

[R. F. NARIMAN AND INDU MALHOTRA, JJ.]

Negotiable Instruments Act, 1881 – s.139 – Statutory presumption under –Operation of – Appellants after being inducted as Directors in respondent's company infused capital therein by way of deposits and shares – Subsequently, they resigned from the company and demanded re-payment of their dues – Respondent issued a promissory note and two cheques in favour of appellants for discharge of their liability – Cheques dishonoured – Trial court convicted respondent u/s.138 – Conviction affirmed by District and Sessions Court – High Court reversed the conviction – On appeal, held: Once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability – This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan – In the present case, the respondent has failed to produce any credible evidence to rebut the statutory presumption – Appellants have proved their case by over-whelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt – Respondent having admitted that the cheques and Pronote were signed by him, the presumption u/s.139 would operate – Impugned order set aside – Order of conviction passed by the trial court, restored. D E F G

Allowing the appeals, the Court

HELD: 1.1 Under Section 139 of the Negotiable Instruments Act, 1881 once a cheque has been signed and H

A **issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan. In the present case, the respondent has failed to produce any credible evidence to rebut the statutory presumption. [Para 8] [360-G-H; 361-A]**

B

1.2 The appellants have proved their case by over-whelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt. The respondent having admitted that the cheques and Pronote were signed by him, the presumption under Section 139, NI Act would operate. The respondent failed to rebut the presumption by adducing any cogent or credible evidence. [Para 9] [361-G-H]

C

Rangappa v. Shrimohan **(2010) 11 SCC 441 : [2010] 6 SCR 507 ;** *K.N. Beena v. Muniyappan and Anr.* **(2001) 8 SCC 458 : [2001] 4 Suppl. SCR 374 ;** *T. Vasanthakumar v. Vijayakumari* **(2015) 8 SCC 378 : [2015] 5 SCR 342– referred to.**

D

Case Law Reference

[2010] 6 SCR 507	**referred to**	**Para 6**
[2001] 4 Suppl. SCR 374	**referred to**	**Para 6**
[2015] 5 SCR 342	**referred to**	**Para 6**

E

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 950-951 of 2018.

From the Judgment and Order dated 27.09.2013 of the High Court of Judicature at Madras in Crl. Rev. Case Nos. 1658 & 1657 of 2008.

G

Mrs. V. Mohana, Sr. Adv., Ms. Kashvi Dutta, Anup Kumar, Advs. for the Appellants.

R. Basant, Sr. Adv., B. Raghunath, Arockiaraj, Vijay Kumar, Advs. for the Respondent.

H

The Judgment of the Court was delivered by

INDU MALHOTRA, J. 1. The present Special Leave Petitions have been filed against the common judgment and order dated 27.09.2013 passed by the High Court of Judicature at Madras in Criminal Revision Case Nos. 1657 and 1658 of 2008. That after issuance of notice, Special Leave Petitions were heard finally.

Leave granted.

1.1 These Appeals arise out of two complaints filed under S.138 of the Negotiable Instruments Act ("the N.I. Act") filed by the appellants against the respondent for dishonour of two cheques of Rs.37,00,000/- and Rs.14,00,000/- respectively.

2. The facts of the case briefly stated are as under: -

2.1 The appellants submit that they were inducted in Maanihada Tea Produce Company Pvt. Ltd. being run by the respondent to infuse capital by way of deposits and shares.

2.2 On 24.11.1998, the appellants resigned as Directors of the Company after which the respondent and his son, DW-3, remained incharge of the Company.

The appellants submitted that the respondent failed to return their share in the company. The appellants made demands for re-payment of their dues.

On 07.08.2002, the respondent issued a Promissory Note for Rs.51,00,000/- in favour of K.Posa Nandhi – the appellant in the Second Appeal. The Promissory Note records that it was being issued against a loan. The respondent also issued two cheques on the same date, one for Rs.37,00,000/- in favour of K.Posa Nandhi, and the other for Rs. 14,00,000/- in favour of T.P.Murugan, towards discharge of their liability for the investments made in M/s.Maanihada Tea Produce Company.

2.3 The cheques were presented for encashment on 03.02.2003 by the appellants, which were dishonoured due to "Stop Payment" instructions issued by the respondent.

2.4 The appellants issued the statutory notices under S.138 of the N.I. Act calling upon the respondent to discharge their debt/liability and clear their dues.

2.5 The respondent vide his reply dated 17.02.2003 refuted the claim of the appellants.

2.6 The appellants filed two complaints under S. 138 of the N.I. Act before the Court of Judicial Magistrate II, Coimbatore.

2.7 The respondent contended that the signed blank Promissory Note was issued by him in favour of N.R.R. Finances Investments Pvt. Ltd. under a hire-purchase agreement for purchasing a lorry on loan basis. The said Promissory Note was not issued in favour of the appellant-complainants. The Promissory Note was filled up by DW.2 Mahesh, an employee of N.R.R. Investments, after the signatures of the respondent were obtained on the same.

With respect to the two cheques which were dishonoured, the respondent contended that these were amongst 10 blank cheques signed and handed over to the appellant-K.Posa Nandhi as security, when he borrowed Rs.5,00,000/- in 1995. That even though this loan was re-paid in 1996 with interest, the cheques were not returned. The respondent further contended that he had issued a letter on 09.11.2002 asking the appellants to return the 10 blank cheques.

3. The Trial Court found that the respondent had admitted his signatures both on the Pronote and also on the two cheques for Rs. 37,00,000/- and Rs.14,00,000/- respectively. The respondent also admitted that the appellant had invested capital in their concern viz. M/s. Maanihada Tea Factory.

The Court disbelieved the version of the respondent with respect to the 10 blank cheques issued to the appellant in 1995. The respondent failed to place any material on record to show that he had ever asked for return of the 10 blank cheques, allegedly given by him to the respondent, for seven years.

That after going through the detailed evidence adduced by the parties, the Trial Court held that the Cheques and Pronote were issued for repayment/discharge of a lawful debt. The respondent was found guilty under S. 138 of the N.I. Act, and sentenced him to undergo R.I. for six months and Fine of Rs.5000/-, failing which, he shall undergo one month's R.I.

4. Aggrieved by the said judgment, the respondent-accused filed Criminal Appeal Nos. 437-438 of 2006 before the District and Sessions Judge, Fast Track Court No. III, Coimbatore. The District and Sessions Judge held that the presumption under Sections 118 and 139 of the N.I. Act was not rebutted by the respondent. It was proved by the complainants that there were insufficient funds in the bank account of the respondent at the time of issuance of the cheques. The respondent had with mala fide intention issued "Stop Payment" instructions. The respondent failed to give any explanation as to how the Pronote came into possession of the appellant. Furthermore, the Sessions Court discarded the evidence adduced by the accused, of DW.2 Mahesh, as being an interested witness, who had falsely stated that he was an employee of N.R.R. Finances. This was rebutted by two witnesses viz. PW.2 and PW.4, who were Directors of N.R.R. Finances who deposed that DW.2 was never employed by this Company. The District and Sessions Court affirmed the conviction and sentence awarded by the Trial Court.

5. Aggrieved by the judgment and order dated 26.11.2008 passed by the District and Sessions Judge, Fast Track Court No. III, Coimbatore, the respondent-accused filed two Criminal Revision Nos. 1657-1658 of 2008 before the Madras High Court. That even though the appellants herein- complainants had initially participated in the proceedings, the present appellant was unrepresented during the final hearing. The hearing of the Criminal Revision Petitions proceeded ex parte.

The High Court recorded that the respondent-accused had not denied either the issuance of the cheques, or his signatures on the Pronote and cheques.The denial was only with regard to the circumstances, the manner and the period during which the cheques were issued. The High Court took the view that the burden cast on the respondent-accused was only to raise a doubt in the mind of the Court about the nature of the transaction. The Ld. Single Judge accepted the contention of the respondent that since the cheques and the Pronote were issued on the same date, it could only be treated as a security, and was not towards any

debt or liability. By raising a doubt with respect to the circumstances in which the Pronote and cheques were issued, the respondent had discharged the presumption under S. 139 of the N.I. Act. The High Court held that the Trial Court and the Sessions Court erred in applying the legal principles of standard of proof for the complainant to prove their case.

The High Court, while exercising its revisional jurisdiction, reversed the concurrent findings of the Courts below, and set aside the judgment of conviction and sentence passed against the accused.

6. Aggrieved by the judgment and order dated 27.09.2013 passed in Criminal Revision Nos. 1657-1658 of 2008, the appellant-complainants filed the present Special Leave Petitions.

Mrs. V. Mohana, Sr. Adv. represented the appellants, and submitted that the respondent-accused has admitted his signatures on the two dishonoured cheques and on the Pronote. The appellants-complainants had adduced sufficient evidence to prove their case. Reliance was placed by the Senior Counsel on the decisions of this Court in Rangappa vs. Shrimohan [(2010) 11 SCC 441], K.N. Beena vs. Muniyappan and Anr. [(2001) 8 SCC 458]; and T. Vasanthakumar vs. Vijayakumari [(2015) 8 SCC 378] in support of her case.

7. **Mr. R. Basanth, Sr. Counsel appeared on** behalf of the respondent-accused, and contended inter alia that the cheques were not issued towards discharge of a legally enforceable debt, but as a security, and that the judgment under challenge required no interference.

8. We have heard Senior Counsel for both parties, and perused the record. Under Section 139 of the N.I. Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability[1]. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan.

[1] Refer to K.N. Beena Vs. Muniyappan and Another[(2001) 8 SCC 458; para 6] and Rangappa vs. Shrimohan [(2010) 11 SCC 441; para 26]

In the present case, the respondent has failed to produce any credible evidence to rebut the statutory presumption. This would be evident from the following circumstances:- A

(i) The respondent-accused issued a Pronote for the amount covered by the cheques, which clearly states that it was being issued for a loan; B

(ii) The defence of the respondent that he had allegedly issued 10 blank cheques in 1995 for repayment of a loan, has been disbelieved both by the Trial Court and Sessions Court, on the ground that the respondent did not ask for return of the cheques for a period of seven years from 1995. This defence was C obviously a cover-up, and lacked credibility, and hence was rightly discarded.

(iii) The letter dated 09.11.2002 was addressed by the respondent after he had issued two cheques on 07.08.2002 for Rs.37,00,000/- and Rs.14,00,000/- knowing fully well that he did D not have sufficient funds in his account. The letter dated 09.11.2002 was an after-thought, and was written to evade liability. This defence also lacked credibility, as the appellants had never asked for return of the alleged cheques for seven years.

(iv) The defence of the respondent that the Pronote dated 07.08.2002 E signed by him, was allegedly filled by one Mahesh-DW.2, an employee of N.R.R. Finances, was rejected as being false. DW.2 himself admitted in his cross-examination, that he did not file any document to prove that he was employed in N.R.R. Finances. On the contrary, the appellants - complainants produced PW.2 and PW.4, Directors of N.R.R. Finances Investment Pvt. Ltd., F and PW.3, a Member of N.R.R. Chit funds, who deposed that DW.2 was never employed in N.R.R. Finances.

9. The appellants have proved their case by over-whelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt. The G respondent having admitted that the cheques and Pronote were signed by him, the presumption under S.139 would operate. The respondent failed to rebut the presumption by adducing any cogent or credible evidence. Hence, his defence is rejected.

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A 10. In view of the aforesaid facts and circumstances, the impugned order dated 27.09.2013 passed in Criminal Revision Petition Nos. 1657 and 1658 of 2008 is hereby set aside, and the order of Conviction and Fine passed by the Trial Court is restored.

11. The Appeals are allowed accordingly.

B

Divya Pandey Appeals allowed.