

(2001) 10 SC CK 0098

In the Supreme Court Of India

Case No : Criminal Appeal 1066 of 2001 and SLP (Crl.) 969 of 2001

K.N. Beena

APPELLANT

Vs

Muniyappan and Another

RESPONDENT

Date of Decision : 18-10-2001

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2002) 1 ACR 247 : (2001) 8 AD 566 : AIR 2001 SC 2895 : (2001) AIRSCW 4344 : (2001) 2 ALD(Cri) 824 : (2002) 1 ALLMR 277 : (2001) 2 ALT(Cri) 382 : (2006) 4 BC 287 : (2002) 50 BLJR 193 : (2002) 3 CGLJ 62 : (2001) 107 CompCas 459 : (2002) 1 CompLJ 55 : (2001)

Hon'ble Judges : S. N. Variava, J;K. T. Thomas, J

Bench : Division Bench

Advocate : V. Prabhakar and M.K.D. Namboodiri, for the Appellant; V.J. Francis, P.I. Jose, A. Radhakrishnan, Jenis Francis, Ms Shwata Garg and Mrs. Revathy Raghavan, for the Respondent

Final Decision : Allowed

Judgement

S.N. Variava, J.—Leave granted

2. Heard parties.

3. Briefly stated the facts are as follows

4. The Appellant filed a complaint u/s 138 of the Negotiable Instruments Act as the Cheque dated 6th April, 1993 in a sum of Rs.63720/-, issued by the 1st First Respondent in favour of the Appellant on Central Bank, had been dishonored with the remarks "Insufficient Funds". The Appellant had issued a legal notice dated 28th April, 1993. Receipt of the said notice is admitted. A reply dated 21st May, 1993 was sent by the 1st Respondent. However no payment was made.

5. After trial the Judicial Magistrate-II, Kumbakonam, convicted the 1st First Respondent u/s 138 and directed payment of a fine of Rs.65000/-. In default the 1st Respondent was to suffer simple imprisonment for one year. The 1st

Respondent challenged the conviction and sentence by filing Criminal Appeal No. 32 of 1995. The same came to be dismissed by the Sessions Judge on 28th August, 1995.

6. The 1st Respondent then preferred Criminal Revision No. 883 of 1995 before the High Court of Madras. A learned Single Judge by the impugned Order dated 20th July, 2000, set aside the conviction and acquitted the 1st Respondent. The learned Judge acquitted the 1st Respondent on the ground that the Appellant had not proved that the cheque dated 6th April, 1993 had been issued for any debt or liability.

7. In our view the impugned Judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonored cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the Negotiable Instruments Act. u/s 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. u/s 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complainants u/s 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P. Dalal Vs. Bratindranath Banerjee, has also taken an identical view.

8. In this case admittedly the 1st Respondent has led no evidence except some formal evidence. The High Court appears to have proceeded on the basis that the denials/averments in his reply dated 21st May, 1993 were sufficient to shift the burden of proof onto the Appellant complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The 1st Respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st Respondent not having led any evidence could not be said to have discharged the burden cast on him. The 1st Respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside that conviction.

9. In this view of the matter the impugned Judgment is set aside. The conviction and sentence as awarded by the Magistrate by his order dated 21st March, 1994, stand. The 1st Respondent is granted one month's time to pay the fine. In default thereof he shall suffer simple imprisonment for three months. The fine if realized. Rs.60,000/- therefrom shall be paid to the complainant as compensation.

10. The Appeals stands disposed of accordingly. There will be no Order as to costs.