2024 INSC 602

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3369 OF 2024

[@ *SPECIAL LEAVE PETITION (CRL.) NO.4022 OF 2022*]

SRI SUJIES BENEFIT FUNDS LIMITED **…APPELLANT**

VERSUS

M. JAGANATHUAN **… RESPONDENT**

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard Mr B. Ragunath, learned counsel for the appellant and Mr. S. Nagamuthu, learned senior counsel for the respondent.

2. Leave granted.

3. The present appeal arises out of the Final Judgment dated 29.01.2020 (hereinafter referred to as the "impugned judgment"), passed by the learned Single Judge of the High Court of Judicature at

Madras (hereinafter referred to as the “High Court”) in Criminal Appeal No.582/ 2012, whereby the appeal filed by the appellant was dismissed and the judgment dated 20.06.2012 of the Vth Additional District and Sessions Judge, Coimbatore (hereinafter referred to as the “Appellate Court”) in Criminal Appeal No.186/2010, was upheld.

BRIEF FACTS:

4. The sole Respondent (hereinafter also referred to as the “accused”), being a subscriber of the Appellant-chitfund company (hereinafter also referred to as the “complainant”), borrowed loan amounts on several dates from the Appellant over a period of about two years which swelled to a sum of Rs.21,09,000/- (Rupees Twenty One Lakhs and Nine Thousand) including interest, after eight years. The loans were advanced in the following manner: Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand) was given on 09.03.1995; Rs.6,00,000/- (Rupees Six Lakhs) on 29.12.1995; Rs.1,00,000/- (Rupees One Lakh) on 22.03.1995; Rs.3,00,000/- (Rupees Three Lakhs) on 11.03.1996; Rs.1,00,000/- (Rupees One Lakh) on 09.04.1997; and finally, Rs.2,00,000/- (Rupees Two Lakhs) on 24.04.1997. In order to partly discharge the aforesaid loan amounts, Cheque No.0150573 dated 03.02.2003 was issued by the accused for a sum of Rs.19,00,000/-

(Rupees Nineteen Lakhs) in favour of the complainant drawn on Indian Overseas Bank, District Court Extension Counter, Coimbatore. The complainant, on 04.02.2003, presented the cheque in Bank of India, Kurichi Industrial Estate Branch, Coimbatore which came to be returned on 05.02.2003 with the endorsement 'Account Closed'. Thereafter, a statutory notice was issued by the complainant on 20.02.2003, reply to which was issued by the accused on 27.02.2003 repudiating the debt. Aggrieved, the complainant filed C.C.No.379/2003 before the Judicial Magistrate Court No.VII, Coimbatore (hereinafter referred to as the "Trial Court") for the offence under Section 138[1] of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act").

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1 '*138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is 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, [69][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 fails 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.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.'

5. Before the learned Trial Court, on behalf of the complainant, the manager of the chit-fund company was examined as PW1 and nineteen exhibits were marked. On behalf of the accused, no witness was examined, however, five exhibits were marked. The learned Trial Court, after perusing the evidence on record and hearing the parties, passed judgment dated 16.08.2010 whereby it convicted the accused for the offence under Section 138, N.I. Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.38,00,000/- (Rupees Thirty Eight Lakhs) as compensation to the complainant.

6. The accused filed Criminal Appeal No.186/2010 in the Appellate Court, challenging the conviction and sentence, along with a petition under Section 391[2] of the Code of Criminal Procedure (hereinafter referred to as the "Code"), for letting in additional evidence. The Appellate Court allowed the petition filed under Section 391 of the Code. This order was challenged by the complainant before the High

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2 '*391. Appellate Court may take further evidence or direct it to be taken.—(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.'

Court, which negatived such challenge and confirmed the order passed by the Appellate Court to let in additional evidence. Before the Appellate Court, the accused examined himself as DW1 and marked thirteen exhibits in order to show that substantial amounts were repaid by him to the complainant.

7. The Appellate Court, by judgment dated 20.06.2012, allowed the accused's appeal and acquitted the respondent holding that the cheque was not issued towards a legally enforceable liability. The appellant filed Criminal Appeal No.582/2012 in the High Court impugning the judgment passed by the Appellate Court. The High Court dismissed such appeal *vide* the impugned judgment.

SUBMISSIONS BY THE APPELLANT-COMPANY:

8. Learned counsel for the appellant submitted that the basic folly committed by the Appellate Court as well as the High Court was that they failed to appreciate that once issuance of cheque is admitted/established, there is a presumption under Sections 138, 139 and 118(a) of the N.I. Act, which is a rebuttable presumption but the respondent has not discharged this burden. It is contended that the burden on the respondent to rebut the presumption by introducing

evidence was initially not done for no justifiable/valid reason before the learned Trial Court and, even upon the plea for adducing additional evidence under Section 391 of the Code, the presumption has not been dislodged as required under law, and still the accused has been acquitted.

9. Learned counsel submitted that the Appellate Court has given benefit of doubt to the respondent by raising question about the figure in the cheque not fully tallying as per the Statement of Accounts inasmuch as in Exhibit D4 for Loan No.175, the total amount borrowed was shown as Rs.6,00,000/- (Rupees Six Lakhs) and the rate of interest is mentioned as Rs.1.80 paise per Rs.100 per month, whereas in the Statement of Accounts, the balance amount is calculated at the rate of 3% per month.

10. It was submitted that the issue of interest was not a matter to be decided and even the learned Trial Court has not disputed the principal amount. Further, learned counsel submitted that the learned Trial Court has also not accepted that the respondent was able to show that substantial amounts were returned. Thus, according to him, the dues still remained to be repaid against the respondent to be made good and so it cannot be said that the amount mentioned in the cheque which

was returned was not a legally-due amount. Learned counsel submitted that on such flimsy and tenuous grounds, the amount which in law was due to the appellant from the respondent, for which the N.I. Act has been brought into existence by the Parliament so that such dues which the accused denies but for which cheques have been issued by him are not honoured, a quick procedure has been prescribed to ensure that financial disputes reach finality, has been totally frustrated by the Appellate Court and erroneously upheld by the High Court. For some receipts shown by the respondent as part re-payment of the loan amount, the contention of the appellant is that one relates to a transaction by one Shri Laxmi Finance and the rest are not genuine due to there being omissions of signature of the cashier, Manager, etc. This aspect, it is submitted, has been brushed aside.

11. He summed up his arguments by submitting that when the respondent also could not show any proof with regard to what was the rate of interest decided *inter-se* the parties, such an issue unilaterally could not be decided against the appellant and further that the logic of the Appellate Court that the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (hereinafter referred to as the “Tamil Nadu Act”) prohibits charging of interest on any unsecured loan beyond a

maximum of 12% per annum, in itself, was unsound as even if it is accepted that the rate of interest was only 1.8% per month, the amount over and above the maximum rate of interest would stand excluded. It was urged that this was no ground to disbelieve that the amount was legally due to the appellant from the respondent.

SUBMISSIONS BY THE SOLE RESPONDENT-ACCUSED:

12. *Per contra*, the learned senior counsel for the respondent raised a preliminary objection that the present appeal is devoid of any question of law, much less a substantial question of law of public importance, and does not warrant interference of this Court in exercise of discretionary jurisdiction vested under Article 136 of the Constitution of India.

13. On merits, it was his stand that when two Courts have taken the view that the appellant was not able to show that the cheque amounts were legally due to him from the respondent, this Court may not reverse such finding. It was submitted that upon further evidence being produced before the Appellate Court, it was noticed that as there is difference in the rates of interest mentioned in the pronotes issued and the Statement of Accounts of the appellant, it has rightly been concluded

that the claim of the appellant that the amount mentioned in the cheque was legally due to him was not sustainable and thus, the same was not relied upon and the respondent was acquitted. It was contended by the learned Senior counsel that the proceeding under the N.I. Act being more or less summary in nature, the Court has rightfully discharged its duty of being strict in scrutiny of evidence so as not to disadvantage the accused leading to miscarriage of justice. He submitted that the present appeal does not merit any consideration and sought its dismissal.

ANALYSIS, REASONING AND CONCLUSION:

14. Having considered the rival contentions, we find that the impugned judgment upholding the order of the Appellate Court requires interference.

15. This Court in ***Dashrath Rupsingh Rathod v State of Maharashtra*, (2014) 9 SCC 129** held that "*An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.*" The fact that the cheque was issued as a consequence

of failure to repay the loan taken by the respondent from the appellant to which the interest was added would more or less settle the issue. However, in the present case, a discrepancy *apropos* the rate of interest, whether it be 1.8%, 2.4% or 3% per month was not sufficient to disbelieve the claim of the appellant. Though the respondent before the learned Trial Court had contended that there was no loan transaction between the parties, but still, before the Appellate Court, by way of additional evidence, he marked receipts to show the re-payment of loan. Even there, the respondent did not produce all the receipts showing total discharge of the loan amount, as was noted by the Appellate Court, and only the difference in the rates of interest as well as the finding that substantial amount has been repaid led to the acquittal of the respondent.

16. On this issue, we would like to indicate that neither in the pronotes nor in the Statement of Accounts, the principal amount has been disputed and the amount arrived at, as reflected in the cheque whether it is in respect of 1.8% interest or 3% interest per month cannot be given undue importance for the reason that the pronotes indicated that under normal circumstances, when there would be repayment by the respondent, the rate would be 1.8% per month but in the event of non-repay-

ment, how much interest by way of an added burden would lie on the respondent has not been specified. Thus, if the rate of interest of 3% instead of 1.8% per month has been added on the principal amount and the amount in the cheques reflects the same, it cannot be said that the cheques were not for repayment of the principal amount, totalling Rs.14,50,000/- (Rupees Fourteen Lakhs and Fifty Thousand). When the respondent does not dispute that he has handed over the cheques or signed on them, it was incumbent upon him, the moment he claims the amount(s) were repaid to the appellant to have either taken back the cheques or instructed the bank concerned to not honour the concerned cheques. However, closure of the bank accounts within a few weeks of issuance of the cheque raises serious questions about the conduct and intent of the respondent. The learned Trial Court, in our view, has meticulously gone into each and every issue while holding in favour of the appellant and the Appellate Court as also the High Court have only gone by scrutiny of the interest amount mentioned on the pronote and effected in the Statement of Accounts of the appellant and the evidence produced before the Appellate Court by the respondent to indicate that some repayment(s) was/were made. This, according to us, is erroneous and cannot be sustained.

17. Furthermore, the reasoning given by the Appellate Court, having taken note of the Tamil Nadu Act, fails to appreciate that even going by what has been written on the pronote i.e., 1.8% per month would lead to the interest being 21.6% per annum, which also is above the cap of 12% per annum prescribed in the Tamil Nadu Act. Thus, if the parties amongst themselves, agreed to a rate which is not in conformity with the Tamil Nadu Act, it was for the respondent to raise an objection or move the appropriate forum for getting the same corrected/taken care of, so that the interest rate did not exceed 1% per month but having agreed to a rate of 1.8% per month, the subsequent amount of interest calculated @ 3% per month does not have much force for it was upon the respondent to challenge the rate of interest. The respondent also cannot be said to be a layman, and being a subscriber to a chitfund company, he is expected to be aware of the laws and also of what is beneficial for him. Having issued the pronotes, he cannot now take a plea in these collateral proceedings under the N.I. Act to contend that the rate of interest was more than what was permissible under the Tamil Nadu Act.

18. For reasons aforesaid, the Appellate Court's order as also the impugned judgment are set aside. The order of the learned Trial Court

stands restored albeit with certain modifications. It is considered appropriate to direct the respondent to pay fine amounting to one and a half (1½) times the amount mentioned in the cheque. Accordingly, the respondent is held liable to pay an amount of Rs.28,50,000/- (Rupees Twenty Eight Lakhs and Fifty Thousand). Further, as has been averred by the respondent in his compliance affidavit that he is 86 years old and living with his wife who is also advanced in age and without issue, the sentence of imprisonment is waived, however, subject to payment, in terms of the present judgment within eight months from today, failing which such sentence of simple imprisonment for one year shall stand revived.

19. The appeal, accordingly, stands allowed in the aforesaid terms.

20. Parties are left to bear their own costs.

…….....J.
[HIMA KOHLI]

...…….....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
AUGUST 13, 2024