REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1978 OF 2013

RAJARAM S/O SRIRAMULU NAIDU
(SINCE DECEASED) THROUGH L.RS. ...APPELLANT (S)

VERSUS

MARUTHACHALAM (SINCE DECEASED)
THROUGH L.RS. ...RESPONDENT (S)

WITH
CRIMINAL APPEAL NO. 1990 OF 2013
CIVIL APPEAL NO. 10500 OF 2013
CIVIL APPEAL NO. 10501 OF 2013

J U D G M E N T

B.R. GAVAI, J.

1. The Criminal Appeals challenge the common judgment and order of conviction and sentence dated 28th October 2008 and 30th October 2008 passed by the Madras High Court whereby the Appellant has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as

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"the N.I. Act") and has been sentenced to a fine of Rs. 7 Lakhs in each case in respect of two cheques for an amount of Rs. 3.5 Lakhs.

2. The Civil Appeals challenge the judgments dated 08th August 2011 and 03rd February 2012 passed by the Madras High Court whereby the Original Suits filed by the plaintiff-respondents for recovery of money on the basis of promissory notes were decreed.

3. For the sake of convenience, the parties will be referred to as their status before this Court.

4. Since both the Criminal Appeals arise out of a common judgment, we consider it apposite to refer to the facts in Criminal Appeal No.1978 of 2013. Insofar as the Civil Appeals are concerned, while they arise out of different judgments, for the sake of convenience, we shall refer to the facts arising from Civil Appeal No.10501 of 2013.

5. The present appeals arise from the following factual matrix:

5.1 In 1992, the Appellant-Rajaram's wife subscribed to a 5-year chit-fund with one Maruthachalam, the Respondent in Criminal Appeal No. 1978/2013 and Civil Appeal No.10500/2013. Upon the Respondent-Maruthachalam's persuasion that, in order to be a successful bidder, a security by way of a blank cheque must be submitted, the Appellant submitted two signed blank cheques bearing nos. 237954 and 237956 on behalf of his wife, since she did not have a bank account. It is to be noted that the cheques were drawn on the account of M/s Brinda Engineering, the sole proprietorship concern of the Appellant, maintained with the Laxmi Vilas Bank Ltd.

5.2 It is further the case of the Appellant that in 1995, his wife subscribed to yet another 5-year chit-fund with the Respondent-Maruthachalam.

5.3 In 1997, the bank account on which the said cheques were drawn was closed due to non-operation.

5.4 The first chit matured in 1997 and, since the wife of the Appellant was never a successful bidder, thus, the Appellant and his wife repeatedly requested the Respondent to release the amount of the chits, but the Respondent never did so. On the contrary, the Respondent promised to keep the amount as a deposit and pay interest. Similarly, the second chit matured in 1999, whereafter also the wife of the Appellant was never a successful bidder. Thereafter, repeated requests for releasing the subscription amount to the tune of Rs. 6 lakhs for both the chits were made on their behalf, but to no avail. Finally, the Appellant and his wife threatened the Respondent with legal action, whereupon the Respondent immediately presented the cheques for encashment without any information or intimation to the Appellant.

5.5 The Cheque No. 237954 was dated 20th October 1999 in favour of Respondent-Nachimuthu (who happens to be the brother-in-law of Maruthachalam) for an amount of Rs. 3,50,000/, and was presented for encashment on 04th November 1999 by the Respondent through his banker Indian Overseas Bank. The said cheque returned unpaid on 14th November 1999 with an endorsement stating "account closed".

5.6 The other Cheque No. 237956 was dated 25th October 1999 in favour of the Respondent-Maruthachalam for an amount of Rs. 3,50,000/-, and was presented for encashment on 04th November 1999 by the Respondent through his banker Indian Overseas Bank. The said cheque too returned unpaid on 14th November 1999 with an endorsement stating "account closed".

5.7 Statutory Notices dated 15th November 1999 were sent in respect of the aforesaid dishonoured cheques, which were

duly replied by the accused/Appellant denying the existence of any legally enforceable debt and stating therein that the Respondent is liable to pay the chit amount along with subsequent interest. Since the amount was not paid, the Respondents instituted Complaint Cases under Section 138 of the N.I. Act, being CC No. 26 of 2000 in respect of Cheque No. 237954 and CC No. 32 of 2000 in respect of Cheque No. 237956. Both the cases were dismissed by the learned Trial Court on 10th July 2001 vide separate judgments.

5.8 Pursuant to the dismissal of the aforesaid cases, both the Respondents instituted civil/original suits for recovery of money on the basis of Promissory Notes.

5.9 Original Suit No. 112/2003 (earlier OS No. 602/2002) was instituted by the Respondent-Nachimuthu, alleging that the Appellant had borrowed a sum of Rs. 3 Lakhs on 20th October 1998 from him and had executed a promissory

note on the same day thereby promising to repay the same with interest at 24% per annum. It was further alleged that the Appellant had issued a cheque on 20th October 1999 for Rs. 3,50,000/- towards the discharge of his liability and when the same was presented for encashment, it was dishonoured as the Appellant had closed the account. Criminal Case No. 32/2000 was pursued under Section 138 of the N.I. Act which was dismissed against which an appeal was pending before the High Court.

5.10 Another Original Suit No. 266 of 2004 (earlier OS 746 of 2002) was instituted by the Respondent-Maruthachalam, alleging that the Appellant had borrowed a sum of Rs. 3 Lakhs on 25th October 1998 from him and had executed a promissory note on 25th October 1998, thereby promising to repay the same with interest at 24% per annum. It was further alleged that the Appellant issued a cheque on 20th

October 1999 for Rs. 3,50,000/- towards the discharge of his liability and when the same was presented for encashment, it was dishonoured as the Appellant had closed the account. Criminal Case No. 26/2000 was pursued under Section 138 of the N.I. Act which was dismissed against which an appeal was pending before the High Court.

5.11 Original Suit No. 112 of 2003 and Original Suit No. 266 of 2004 came to be dismissed vide judgment dated 06th January 2004 and 29th July 2005 respectively. As against both the judgments, appeals were preferred before the High Court.

5.12 The Appeals against the judgments in criminal matters were allowed by the High Court vide common judgment and order of conviction and sentence dated 28.10.2008 and 30th October 2008.

5.13 In Appeal, Original Suit No. 266 of 2004 and Original Suit No. 112 of 2003 were decreed by the High Court vide judgments dated 08th August 2011 and 03rd February 2012 respectively.

5.14 The Appeals against all the 3 judgments of the High Court are before us and are being disposed of vide this common judgment.

6. We have heard Ms. Neha Sharma, learned counsel appearing for the Appellants in all the appeals, and Mr. V. Prabhakar, learned counsel appearing for both the Respondents in all the appeals.

7. Ms. Neha Sharma submits that the High Court has erroneously reversed the well-reasoned judgements of the learned Trial Court. She submitted that blank cheques issued in the year 1992 by way of security for chit-funds were misused by the Respondents in the year 1999. She further submitted that in the year 1999, when the cheques were sent for

encashment, the Appellant was no longer the proprietor of M/s Brinda Engineering and the bank account on which the said cheques were drawn was not operated after 1992, and had already closed in 1997 due to non-operation. She further submitted that even before the account was closed down, the wife of the Appellant became the sole proprietor of the enterprise, and thus, the appellant could not have signed the said cheques in the capacity of the proprietor of M/s Brinda Engineering.

8. The learned counsel submitted that the Respondents herein did not have the financial capacity to lend an amount of Rs.3,00,000/- each as on 20th October 1998 and 25th October 1998, when the promissory notes were said to have been executed. It is further submitted that although it was the Respondents' case that they had given the amounts out of their agricultural income, since they had not declared the same in their Income Tax Returns from 1992-1999, thus, there was no

material to show that they could have lent money. To buttress her submissions, the learned counsel relies on the judgment of this Court in the case of, ***Basalingappa v. Mudibasappa***[1],

9. Per contra, Mr. V. Prabhakar, learned counsel for the Respondents, submits that the Appellant-Raja Ram had failed to produce any material evidence to substantiate the claim that his wife subscribed to the chit-funds run by Respondent, Maruthachalam. He submitted that the High Court rightly observed that no material was produced by the Appellant-Raja Ram to prove that the cheques and promissory notes were issued only as a security for such a chit. He further submitted that no legal proceedings were initiated for the recovery of the alleged amount due by the Appellant either.

10. The learned counsel submitted that there arose no occasion for the Appellant-Raja Ram to issue a blank cheque in the year 1992 for a chit to be subscribed much later in the year 1995. It is further submitted that even if certain amounts are

1 **(2019) 5 SCC 418**

not accounted for in the Income Tax Returns, this is a matter concerning only the defaulter and Revenue Authority. Thus, a borrower cannot be allowed to take advantage of the same solely on the ground that such an amount does not reflect in the Income Tax Returns. The learned counsel relied on the judgments of this Court in the cases of ***Bir Singh v. Mukesh Kumar***[2], ***Rohitbhai Jivanlal Patel v. State of Gujarat and Anr***[3], ***Kalamani Tex and Anr v. P. Balasubramanian***[4] to buttress his submissions.

11. We shall first consider the Criminal Appeals.

12. This Court in the case of ***Baslingappa v. Mudibasappa*** (supra) has summarized the principles on Sections 118(a) and 139 of the N.I. Act. It will be relevant to reproduce the same.

> "**25.** We having noticed the ratio laid down by this Court in the above cases on Sections 118(*a*) and 139, we now

2 **(2019) 4 SCC 197**
3 **(2019) 18 SCC 106**
4 (2021) 5 SCC 283

summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

> **25.5.** It is not necessary for the accused to come in the witness box to support his defence."

13. It can thus be seen that this Court has held that once the execution of cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has however been held that the presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. It has further been held that to rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. It has been held that inference of preponderance of probabilities can be drawn not only from the

materials brought on record by the parties but also by reference to the circumstances upon which they rely.

14. In the said case, i.e. ***Baslingappa v. Mudibasappa*** (supra), the learned Trial Court, after considering the evidence and material on record, held that the accused had raised a probable defence regarding the financial capacity of the complainant. The accused was, therefore, acquitted. Aggrieved thereby, the complainant preferred an appeal before the High Court. The High Court reversed the same and convicted the accused. This Court found that unless the High Court came to a finding that the finding of the learned Trial Court regarding financial capacity of the complainant was perverse, it was not permissible for the High Court to interfere with the same.

15. In the present case, the accused appellant had examined Mr. Sarsaiyyn, Income Tax Officer, Ward No.18, Circle (II) (5), who produced certified copies of the Income Tax Returns of the

complainant for the financial year 1995-96, 1996-97, 1997-98 and 1998-99. The certified copies of the Income Tax Returns established that the complainant had not declared that he had lent Rs.3 lakh to the accused. It further established that the agricultural income also was not declared in the Income Tax Returns.

16. The learned Trial Court further found that from the income which was shown in the Income Tax Return, which was duly exhibited, it was clear that the complainant(s) did not have financial capacity to lend money as alleged.

17. The appellant had also examined D.W.2-Thiru Iyyappan, Assistant Manager, City Union Bank, Ramnagar Branch with regard to bank transactions made by the sole proprietorship firm, M/s Brinda Engineering.

18. D.W.3-Mr. Subramaniam, Manager, Lakshmi Vilas Bank, Ganapathy Branch was also examined on behalf of the defence. The said witness also deposed that the complainant had signed

the application form to introduce the accused to open the account in the bank.

19. D.W.4-Mr. Ganesan, Village Administrative Officer, Ganapathy Village was also examined and he deposed that the land in S.F. No. 591/3 and 592/3 was in joint ownership, and, in the aforesaid survey numbers, the names of 27 persons were found.

20. After analyzing all these pieces of evidence, the learned Trial Court found that the Income Tax Returns of the complainant did not disclose that he lent amount to the accused, and that the declared income was not sufficient to give loan of Rs.3 lakh. Therefore, the case of the complainant that he had given a loan to the accused from his agricultural income was found to be unbelievable by the learned Trial Court. The learned Trial Court found that it was highly doubtful as to whether the complainant had lent an amount of Rs.3 lakh to the accused. The learned Trial Court also found that the

complaint had failed to produce the promissory note alleged to have been executed by the accused on 25th October 1998. After taking into consideration the defence witnesses and the attending circumstances, the learned Trial Court found that the defence was a possible defence and as such, the accused was entitled to benefit of doubt. The standard of proof for rebutting the presumption is that of preponderance of probabilities. Applying this principle, the learned Trial Court had found that the accused had rebutted the presumption on the basis of the evidence of the defence witnesses and attending circumstances.

21. The scope of interference in an appeal against acquittal is limited. Unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the learned Trial Court.

22. Insofar as the reliance placed by Mr. Prabhakar on the judgment of this Court in the case of ***Bir Singh v. Mukesh Kumar*** (supra) is concerned, in the said case, though the

accused was convicted by the learned Trial Court, which conviction was maintained by the Appellate Court, the High Court in its revisional jurisdiction interfered with the same and acquitted the accused. This Court found that in exercise of revisional jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, the High Court could not, in the absence of perversity, upset concurrent findings of fact. In any case, in the said case, the accused had not led evidence with regard to the financial capacity of the complainant. This Court held that once a cheque was signed and handed over by the accused, it would attract presumption under Section 139 of the N.I. Act in the absence of any cogent evidence to show that the cheque was not issued in the discharge of a debt.

23. In the case of ***Kalamani Tex and another v. P. Balasubramanian*** (supra), the learned Trial Court had dismissed the complaint. In appeal, at the behest of the complainant, the same was allowed and the accused were

convicted for the offence punishable under Section 138 of the N.I. Act. In an appeal at the behest of the original accused, this Court while affirming the order of the High Court observed thus:

> "**18.** Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of "preponderance of probability". In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of NIA."

24. It can thus be seen that in the facts of the said case, this Court found that the defence raised by the appellants/accused did not inspire confidence or meet the standard of "preponderance of probability".

25. In the present case, we are of the considered opinion that the defence raised by the appellant satisfies the standard of "preponderance of probability".

26. Insofar as the reliance on the judgment of this Court in the case of ***Rohitbhai Jivanlal Patel v. State of Gujarat and Anr.*** (supra) is concerned, in the said case, the learned Trial Court had acquitted the accused, the High Court, in appeal, reversed the acquittal and convicted the accused for the offence punishable under Section 138 of the N.I. Act. Affirming the order of the High Court, this Court held that merely by denial or merely by creation of doubt, the accused cannot be said to have rebutted the presumption as envisaged under Section 139 of the N.I. Act. This Court held that unless cogent evidence was led on behalf of the accused in defence of his case, the presumption under Section 139 of the N.I. Act could not be rebutted. As such, the said judgment also would not be applicable to the facts of the present case.

27. In that view of the matter, we are further of the considered view that the High Court was not justified in reversing the order of acquittal of the appellant.

28. That leaves us to consider the Civil Appeals. Insofar as the Civil Appeals are concerned, the High Court, by two different judgments and orders, has reversed the judgments and orders of the learned Trial Court dismissing the suits, thereby decreeing them. It is a settled proposition of law that the standard of proof in criminal proceedings differs with that in civil proceedings.

29. A distinguishing fact between the criminal proceedings and the civil proceedings in the present case is that, while in the criminal proceedings the complainant had failed to produce the promissory notes, in the civil proceedings, the complainant had proved the promissory notes. The High Court found that the Civil Appeals were required to be decided on the basis of the preponderance of probabilities. The High Court found that the

complainant had established that he was working as a LIC Agent, that his father was owning extensive agricultural properties and that he was deriving agricultural income. The High Court, on the basis of the evidence placed on record, relying on the preponderance of probability, came to a conclusion that the plaintiff had the financial ability to lend the sum of Rs.3 lakh as on 20th October 1998. The High Court also found that the appellant's wife was not examined as a witness in the said case so as to probabilize the defence plea. The High Court found that the best available evidence was withheld by the defendants/appellants herein and as such, the principle of adverse inference was also applicable.

30. Though it was sought to be argued before the High Court that in view of the judgment in the criminal proceedings, the suit(s) was also liable to be dismissed, the High Court rightly observed that the adjudication in civil matters is based on preponderance of probabilities whereas adjudication in criminal

cases is based on the principle that the accused is presumed to be innocent and the guilt of the accused should be proved to the hilt and the proof should be beyond all reasonable doubt.

31. We, therefore, find no reason to interfere with the judgments and orders passed by the High Court in the Civil Appeals. However, in the facts and circumstances of the case, we are inclined to modify the decree. During the pendency of the proceedings before this Court, the appellants have deposited an amount of Rs.7 lakh and Rs. 2 lakh pursuant to the orders of this Court dated 20th February, 2009 passed in Criminal Appeal No. 1978 of 2013 (arising out of Special Leave Petition (Criminal) No.1456 of 2009 and connected matter and dated 13th August, 2012 passed in Civil Appeal No.10501 of 2013 (arising out of Special Leave Petition (Civil) No.23036 of 2012). The said amount has been directed to be invested in a Fixed Deposit Receipts from time to time. We are, therefore, of the view that, in the facts and circumstances of the present case,

the decree needs to be modified restricting it to the amount already deposited by the appellants in both the proceedings with interest accrued thereon.

32. In the result, we pass the following order:

(i) Criminal Appeal Nos. 1978 of 2013 and 1990 of 2013 are allowed and the common judgment of conviction dated 28th October 2008 and order of sentence dated 30th October 2008 respectively are quashed and set aside. The judgments and orders dated 10th July 2011 passed by the learned Trial Court is confirmed.

(ii) Civil Appeal Nos. 10500 of 2013 and 10501 of 2013 are dismissed. However, the decrees of the High Court are modified, thereby restricting them to the amount already deposited by the appellants in this Court in the civil and criminal proceedings, along with interest accrued thereon.

(iii) The respondents in both the Civil Appeals would be entitled to withdraw 50% of the amount each from the amount deposited in this Court with interest accrued upto date.

33. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

.....J.
[B.R. GAVAI]

.....J.
[M.M. SUNDRESH]

NEW DELHI;
JANUARY 18, 2023