Tamil Nadu Civil Judge (Mains) 2018

Law Paper III · compulsory paper

Duration : 3 Hours · Max. Marks : 100

General Instructions to Candidates

i) The facts and particulars provided in the Question Paper i.e. the court name, place, case numbers and names of parties are fictional. Yet candidates have to conclusively - assume them to be true for the purposes of solving the questions.

ii) Candidates may write the answers either in English or in Tamil but not in both.

iii) The Question Paper is provided in Tamil and English versions. In all matters and the cases of doubt, the English version is final.

SECTION A — (4 x 10 = 40)

FRAMING OF CHARGES

Note:

i. This section contains four questions and all the four shall be attended. Each question carries 10 marks. ii. The candidates are to assume that they are the Presiding Officers and they are to consider the details of the final report furnished herein below and frame necessary charges specifically against each accused. If the candidates feel that the accused are to be discharged they shall pass a reasoned order discharging the accused. iii. Candidates need not write the cause title of the case, court number, the name of the Judge, case number, name of the Advocates etc., No marks will be awarded for writing cause title.

1. [10 marks]

The defacto complainant, wife of the 1st accused, while living with her husband in the matrimonial home, had preferred a complaint against her husband the 1st accused and his family members namely the 2nd accused her mother-in-law, 3 and 4 accused her sister-in-laws, alleging that the accused persons abused her verbally and harassed her on 23.11.2009 in the house of the accused at about 3.00pm. The final report was laid against accused 1 to 4 for offences under sec. 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

2. [10 marks]

On 13.6.2015 at about 20.00 hours the accused A1 to A4 armed with wooden logs along with A5 and A6 formed themselves into an unlawful assembly in front of the shop of the defacto complainant David at Block No.71, Kotturpuram, Chennai and A1 by uttering “தெவ்டியா மகனே என் தங்கச்சியவா கிண்டல் பண்ற”, trespassed into the said shop and assaulted David with wooden log on his head causing simple injury. The second accused entered the shop and assaulted David on his legs with a wooden log causing injury. When John, brother of David intervened he was also assaulted on his face by A4 with a wooden log resulting in loss of his left molar tooth. A3, A5 & A6 threatened David that if the same is repeated in future he will face dire consequences. Due to the injury sustained on the leg, David was bedridden and he underwent treatment as in-patient till 05.7.2015 at ‘MN’ Hospital. The Doctor who treated David opined that David has suffered simple injuries and John has suffered grievous injuries. The Inspector of Police of Kotturpuram Police Station laid a final report against A1 to A6 for offences under sec. 147, 148, 323, 326 r/w. 149, 452, 294(b) and 506(ii) IPC.

3. [10 marks]

On 27.6.2001 at 2.30 pm at Green Hotel, Red hills, the defacto complainant Kumar met A1 at the hotel, abused A1 for not returning back Rs. 50,000/ which he had borrowed from him. Al confided the incident to his brothers A2 and A3 at his home and they mutually decided to beat Kumar. On the same day at 8.30 pm A1 to A3 gathered near Ayyappan temple at Kattupakkam through which Kumar passes regularly to his home. When Kumar passed by, A1 who was hiding behind the Ayyappan temple whistled and signalled Kumar's arrival to the other accused who were standing 150 ft away. A2 caught hold of Kumar while A3 assaulted him with a knife thereby causing grievous injury on his right shoulders. The final report has been filed by the Inspector of police charging A1 to A3 for offences under sec. 341, 326 r/w. 34 IPC.

4. [10 marks]

According to the final report laid down by the DCB Police, Virudhunagar, A1 Raman, A2 Hari and approver Samy Pillai are close friends. Between 12.7.1996 and 14.11.1996, all the three of them had cheated one Suresh and the complainant State Bank of India, Main branch, Virudhunagar fraudulently and dishonestly, deceiving and inducing the Bank to deliver a sum of Rs. 1,40,000/- from Suresh's account. The 2nd accused Hari had withdrawn, on 12.7.1996, Rs. 75,000/- and on 14.8.96, 55,000/-, from Suresh's Savings Bank Account No.95/21379. Similarly on 8.11.96 Rs.5,000/-, and on 13.11.96 Rs. 5,000/- have been withdrawn by the approver Samy Pillai. During the same course of transaction, the 1st accused Raman had forged and created a duplicate pass book of S.B. Account No. 95/21379 and had made entries in it for period 5.8.1995 to 22.2.1996 (i.e.) the entries found in the original passbook, intending that the forged passbook shall be used for the purpose of cheating.

During the same course of transaction, A2 Hari and approver Samy Pillai, had forged certain documents namely 4 withdrawal slips intending that it shall be used for the purpose of cheating.

During the same course of transaction, A2 had fraudulently used as genuine, certain documents namely withdrawal slips which he knew to be forged documents even at the time when he used them and similarly the approver had also used forged withdrawal slips knowing fully well that they were forged documents even at the time when they were used.

A1 had abetted A2 in the commission of offence by inducing A2 to fill up the body of the first two withdrawal slips and also induced him to sign the withdrawal slips. He had similarly abetted the approver and induced him to fill up the remaining 2 slips. Hence charges for offences u/s 468, 420, 471, 420 r/w 109 IPC against the accused have been laid.

SECTION B — (2 x 30 = 60)

WRITING JUDGEMENT

Note:

i. Candidates need not write the cause title of the case, court number, name of the Judge, case number, name of the Advocates etc., no marks will be awarded for writing cause title. Marks will be awarded based on _appreciation of facts and evidence, for application of Law, the reasoning given by the candidates for arriving at whatever conclusion they have reached. ii.The candidates are to assume the role of the Presiding Officer and they are to write the Judgment commencing from Points for Determination. iii. There are 2 questions in this section and each question carries 30 marks. Candidates are to answer both the questions.

5. [30 marks]

The complainant preferred Private complaint under 190(1) (a) r/w. 200 Code of Criminal Procedure, 1973 for offence under sec. 138 of Negotiable Instruments Act containing the following details:

The complainant has claimed that he owned five cents of land at Virugambakkam Revenue village, Chennai and the accused who was acquainted with him expressed his willingness to purchase the property for a sum of Rs. 2 crores. Both the parties agreed that the sale consideration would be shown as Rs. 75 lakhs in the sale deed so as to evade stamp duty which would help the purchaser, while the complainant would also be benefited by evasion of capital gains tax for the entire sum. As agreed, the sale deed showing the consideration of Rs. 75 lakhs was executed on 10.5.2016, this amount of Rs.75 lakhs was given by way of demand draft and it was also recorded in the sale deed. India, Rs. The accused also issued cheque bearing no. 101017 drawn on State Bank of Virugambakkam Branch dt. 10.5.2016 for the balance sale consideration of 1.25 crores on the same day.

When the complainant presented the cheque into his Indian Overseas Bank Account at Virugambakkam, the cheque was returned on 12.5.16 with the Banker's endorsement “Insufficient funds”. Statutory notice under Section 138 of Negotiable Instruments Act, 1881 was issued on 16.5.16 and the same was returned on 19.5.16 with endorsement “intimation served addressee absent”. Hence, the complainant issued a second notice on 20.5.16 and the same was received by the accused on 22.5.16, but he neither reply nor paid the cheque amount. After recording sworn statement of the complainant, Court took cognizance against the accused for the offences under Section 138 Negotiable Instrumenté Act, 1881 and issued summons to the accused along with documents filed by the complainant. On appearance and questioning, the accused denied the offence and evidence was recorded on the side of the complainant. The complainant was examined as PW1 and the dishonoured cheque, Banker’s endorsement, two legal notices with returned cover and acknowledgment card respectively and certified copy of the sale deed executed by the complainant in favour of the accused were marked as Exhibits P1 to P7. PW2 is a common friend of the accused and the complainant. He has deposed that the sale consideration was mutually agreed upon by both parties and fixed at Rs. 2 crores and that the subject cheque was issued for the balance consideration only.

When these incriminating circumstances made out from the evidence were put to the accused under section 313 (1) (b) Code of Criminal Procedure and questioned, the accused specifically denied the allegations.

No oral or documentary evidence was adduced on the side of the accused. Both sides were heard . On the side of the complainant it was submitted that the accused has not denied his signature or the issuance of cheque and hence presumption under sec. 139 Negotiable Instruments Act, 1881 has to be invoked and as the accused has not rebutted the presumption, he is liable to be punished and the complainant must be compensated.

The counsel for the accused submitted that issuance of second notice is not permissible and further that there is no legally enforceable debt or liability and the complainant cannot depose against the recitals of the sale deed.

6. [30 marks]

The final report as laid by the Inspector of Police, Coimbatore Race Course Police Stations is that on the night of 15.01.2008 at Valmeekam House, Race Course, Coimbatore the accused committed

trespass into the house of the defacto complainant by breaking open the staircase door latch and committed theft of 5 gold bangles (2 bed sovereigns each) and 3 gold rings (1 sovereign each) from the Almirah kept in the room. Hence, the accused has committed offences punishable u/s. 457 and 380 IPC.

On appearance of the accused on receipt of summons, copies of the documents relied upon by the prosecution were furnished to him uw/s 207 Code of Criminal Procedure. The accused was questioned and he denied the offence and claimed to be tried. After perusing all the relevant records and hearing both sides, as the court is of the opinion that there is ground for presuming that the accused has committed offences under ws.457 and 380 IPC, the court framed charges against the accused for offences u/s 457 and 380 IPC. The charges were read over and explained to the accused in Tamil and he was questioned. The accused denied the charges and claimed to be tried.

The prosecution has examined (1) Mr. Purushothaman, (2) Mrs. Lakshmi, (3) Mr. Kumar neighbour of Compliment, (4) Mr. Ravi Constable, and (5) Mr. Ramanathan Inspector of police as PW1 to PW5 and exhibits Ex. P1 tp Ex. P9 was marked. Material Objects M.O.1 and M.O.2 were marked.

The brief facts of the prosecution case is as follows: PW1 and PW2 are residing at Valmeekam House, Race Course, Coimbatore. On 16.01.2008 when they woke up in the morning they found their house staircase door 'latch broken and 5 gold bangles (2 sovereigns each) and 3 gold rings (1 sovereign each) from the Almirah kept in the bedroom missing. On the same day at 9.00 am PW1 lodged Ex.P1 Police complaint and PW5, registered FIR in crime no. 37/2008 on the basis of Ex.P1 complaint. PW1 has also deposed that the police came to his house and investigated and later on 6/11/2008 his wife went to the police station and identified the jewels. PW2 has corroborated his deposition. He has also deposed that Experts visited the place of occurrence and on examination found that the accused had entered into PWIs house by breaking open the door latch of the staircase and entered the house through the staircase. No fingerprints were found.

PW3 has deposed about receiving information about the theft, visiting PW1's house, being present when the police inspected the house and signing as witness in the observation mahazar. His signature in the observation mahazar has been marked as Ex. P2.

PW4 has deposed about the arrest of the accused near the burial ground at Pappampatti by the Investigation Officer, about recording the voluntary confession of the accused and recovery of jewels based on confession from the house of the accused situated behind Pappampatti burial ground. His signatures in the confession and seizure mahazar are marked as Ex.P3 and Ex.P4.

PW5 has deposed that he took up investigation on 16/1/2008 after receipt of complaint from PW1 and registering FIR Ex.P5 at 9.05 am. He has also deposed about inspecting the in the scene of occurrence, preparation of Ex.P6 Observation mahazar and Ex.P7 Rough sketch presence of PW3. He has further deposed that on 05.11.2008 at 11.00pm when 'he along with PW4 were on patrol duty near Pappampatti burial ground, he arrested the accused who was moving suspiciously, and that on enquiring, the accused gave a voluntary confession statement at-11.15 pm in the presence of PW4 who was the only available witness at that time and in furtherance of said confession, seized M.O.1, 5 gold bangles and M.0.2, 3 gold rings in the presence of PW4 from the house of the accused which is situated behind Pappampatti burial ground on the outskirts of Coimbatore City. The admitted portion of the confession and the seizure mahazar have been marked as Ex.P8 and Ex.P9. The Investigating Officer has also deposed that PW5, PW1 and PW2 identified the jewels so seized, in the Police station on

6.11.2008. He has further stated that after completing the investigation he filed the charge sheet against the accused.

After the Prosecution side was closed, the incriminating circumstances made out from the evidence was put to the accused and he was questioned under section 313(1)(b) Code of Criminal Procedure, 1973. The accused denied the same. The accused did not let in any evidence.

Arguments:

The Learned Assistant Public Prosecutor would submit that the evidence of PW1 to PWS5 are sufficient to prove the case of the prosecution that M.O.1 and M.O.2 were stolen from the house of PW1 and PW2 by the accused by committing housebreaking and theft. The cogent and corroborative evidence of PW1 and PW2 in identifying the recovered jewels both in the Police station and in the Court and the cogent and corroborative evidence of PW4 and PW5 in speaking about the voluntary confession of the accused and recovery made pursuant there to would prove the case against accused beyond all reasonable doubt and hence, the accused has to be convicted and sentenced, for the offence under section 457, 380 IPC. The counsel for the accused would submit that there are no vital facts and evidence to implicate the accused in the occurrence, especially fingerprints at the scene of occurrence and evidence of any independent witness to speak about the arrest and recovery. He would submit that PW4 is an interested witness and as such his evidence cannot be considered. The counsel for the accused further submitted that there is no explanation on the side of the prosecution as to why and what made PW5 to arrest the accused on 05.11.2008 near the burial ground Pappampatti, when he had no evidence to connect the accused with the crime. The evidence of PW5 is also not specific to the extent that he arrested the accused under suspicion. Thus the case of the prosecution against the accused is false and the material objects alleged to have been seized are created for the purpose of the case.

Specify the offence under which the accused can be charged and write judgement.