Bail Slip

The petitioner/Accused namely M.Ruthiramoorrthy, S/o. Manickam, was ordered to be released on bail by order of this court dated 23.12.2010 and made in M.P.No.2 of 2010 in Crl.R.C.No.1001 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1001 of 2010

M. Ruthiramoorrthy ...Petitioner/Accused

Versus

M/s. Majestic Finance Investments
by its Power of Attorney Holder
P.S.Jayakumar
No.C-5, Vasanth Apartments,
No.40, Old No.75,
C.P.Ramasamy Iyer Road
Chennai 600 018. ...Respondent/Complainant

Criminal Revision case filed under Section 397 and 401 of Cr.P.C. to call for the records in C.A.No.44 of 2010 dated 09.8.2010 on the file of Hon`ble Additional District and Sessions Judge, Fast Track Court V, Chennai and confirming the order passed in C.C.No.5718 of 2004, dated 12.3.2010 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai, and set aside the same.

For Petitioner : Mr. B.R.Shankaralingam

For Respondent : M/s. Kumar and Baskar

ORDER

The revision has been filed against the Judgment dated 09.8.2010 passed in Crl.A. No.44 of 2010 on the file of the Additional Sessions and Judge (FTC-V) Chennai, confirming the Judgment dated 12.3.2010 passed in C.C.No.5718 of 2004 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai -15 and set aside the same.

2. The case of the respondent/complainant Firm is that they are doing financial business and the accused obtained loan of Rs.2,44,000/- and agreed to pay the amount in equated monthly instalment with interest thereon. The accused had issued cheque through his Proprietorship concern towards part payment of the loan amount. When the said cheque was presented for encashment, the same was returned with an endorsement "Account closed". Therefore, legal notice was issued to the accused but the same was returned unserved. Thereafter, the complainant has filed the present complaint for the offences punishable under Section 138 of the Negotiable Instrument Act and the same was taken cognizance in C.C. Nos. 5718 of 2004 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced him to undergo simple imprisonment for a period of one year. The appeal filed by the petitioner before the Appellate Court in Crl.A. No. 44 of 2010 was also dismissed and the appellate Court, by judgment dated 09.8.2010, while confirming the sentence of imprisonment, directed the accused to pay a compensation of Rs.1,51,650/-. Aggrieved by the order passed by the Courts below, the petitioner has filed the present Criminal Revision Cases.

3. The learned counsel for the petitioner submitted that the complaint itself is not maintainable. According to the learned counsel as the respondent, being a proprietary concern, is not a legal entity and it is not entitled to prosecute the complaint as against the petitioner. The leaned counsel for the petitioner further submitted that there is a lot of discrepancy with regard to the advancement of loan amount. P.W.3, the proprietor of the company, has stated that the amount is Rs.2,00,000/- whereas P.W.1, the power of attorney holder deposed that the loan amount is Rs.2,44,000/-. When there is a such great discrepancy, the rebuttal will not arise till very quantum is fixed. The learned counsel for the petitioner also submitted that at the time of cross examination, P.W.3, admitted that Ex.D10 receipt was for Rs.1,19,500/- whereas the contention of the respondent is that the receipt was only for Rs.19,500/-. Further P.W.3 in the cross examination admitted that Ex.D.10 was written by him and at that time he has not denied that the amount was only Rs.19,500/-. The learned counsel for the petitioner submitted that the Court below failed to take into consideration this vital point while convicting the petitioner. It is submitted by the learned counsel that though the cheque amount was Rs.1,51,650/-, the petitioner has paid a sum of Rs.2,55,350/- to the Complainant. Therefore, the learned counsel prayed for showing leniency in reduction of sentence.

4. The learned counsel for the respondent by relying on the judgment of the Hon`ble Supreme Court in SHANKAR FINANCE INVESTMENTS vs. STATE OF ANDHRA PRADESH (2008 (3) SCC Crl. 558) has submitted that in a Criminal Complaint relating to an offence under Section 138 of Negotiable Instrument Act, it is permissible to lodge the

complaint in the name of the proprietary concern itself. The leaned counsel for the respondent further submitted that the Principal Complainant was put in the witness box and he had deposed about the execution of the Power of Attorney. Therefore, the question regarding the admissibility and validity of the Power of Attorney need not be gone into. The learned counsel also submitted that as per Expert opinion, it is clear that there is an interpolation in Ex.D10 document and therefore, the Courts below have rightly come to the conclusion that Ex.D10 receipt was given to the petitioner/ accused for an amount of Rs.19,500/- only and not Rs.1,19,500/- as stated by the petitioner. It is also submitted that P.W.3 is a bonafide person and he has admitted the signature. Since no question was putforth to him with regard to the amount, he has not mentioned the amount. In fact, he was put in the witness box only to depose about the execution of the power of Attorney. Therefore, the learned counsel prayed for dismissal of the revision.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. On a careful perusal of the entire records as well as the judgment of the Courts below, it is clear that the complaint is maintainable even though it is given in the name of the Proprietorship concern. As rightly pointed out by the Courts below as per the judgment of the Hon`ble Supreme Court in SHANKAR FINANCE INVESTMENTS V. STATE OF ANDHRA PRADESH AND OTEHRS, insofar as the Criminal case under Section 138 or 142 of the Negotiable Instrument is concerned, if the power of attorney has been properly executed, the complaint filed by the power attorney on behalf of the payee, proprietorship concern is maintainable. But only in the civil law, where an individual carries on business in a name or style other than his own name, he cannot sue in the trading name but must sue in his own name though others can sue in the trading name. In the case on hand, since the loan amount was given to the petitioner/ accused in the capacity of Majestic Finance and Investments and it was not denied by the petitioner/ accused and that the cheque was also issued in the name of proprietary concern, the Courts below have rightly held that the complaint is maintainable.

7. Insofar as the contention raised with regard to the quantum is concerned, the petitioner /accused admits the loan transaction. According to the petitioner/accused, the cheque amount was only Rs.1,51,650/-. P.W.1 has stated that a sum of Rs.2,44,000/- was advanced as loan to the petitioner/ accused. The respondent/complainant has clearly stated that the the said sum of Rs.2,44,000/-, includes interest also. Therefore, transaction is admitted and quantum is also partly admitted. Similarly, part payment made by the petitioner / accused is also admitted. Ex.D3 is the computerized bill for Ex.D10 receipt given by the respondent/complainant for payment of Rs.19,500/-. In D3, the amount is mentioned as Rs. 19,500/- But, in D10, the letter, "1" is

interpolated in one place and prefixed in another place, which has been clearly proved by the Handwriting expert.

8. Further, P.W.3 was put in the witness box only to depose about the execution of power of Attorney. In the cross examination, the petitioner/accused has not put any question regarding the power of attorney. The petitioner/accused has asked whether the amount mentioned in Ex.D10 is Rs. 1,19,500/- or Rs.19,500/-, for which, P.W.3 has carefully stated that the amount is mentioned as Rs.1,19,500/-. It is useful to extract the said portion of the evidence, which read thus:

> "எ.த.சா.ஆ.10ல் உள்ளது என்னுடைய கையொப்பம்தான். ரசீதை தயாரிக்கும் போது கார்பன் வைத்து தயாரிப்பது இல்லை, எ.த.சா.ஆ.10ல் 1,19,500// என்று தொகை குறிப்பிடப்பட்டுள்ளது. .. .. .,. .. .. .. "

The petitioner / accused has not asked anything thereafter with regard to the amount More over, the handwriting expert has given a clear cut finding with regard to the interpolation of the letter '1'. In the report Ex.P6 has stated that '1' is prefixed and '1' is written in black ink in Ex.D10 and in another place '1' is interpolated is clearly mentioned.

9. But at the same time, from the entire evidence available, it is clear that transaction is only Rs.2,00,000/- and not for Rs.2,44,000/- as stated by the respondent/ complainant. It is submitted by the respondent that a sum of Rs.44,000/- has been included towards interest. Nobody can add interest even at the time of advancing loan. However, it is clear that the petitioner/accused has committed offence under Section 138 of the Negotiable Instrument Act. Further, it is admitted that apart from Ex.D10, a sum of Rs.1,50,000/- has been paid by the petitioner/accused. Therefore, the order of the Courts below in convicting the petitioner is correct. But insofar as the sentence is concerned, the first appellate Court enhanced the sentence by imposing payment of compensation of Rs.1,51,650/- apart from confirming the sentence of imprisonment of the trial Court, which is not correct as there is a discrepancy is the evidence.

10. Since the complainant has stated that Rs.44,000/- has been added as interest in the Principal sum of Rs.2,00,000/- and that the petitioner has paid a sum of 1,50,000/-, it is suffice to state that the petitioner/accused shall pay a sum of Rs.1,00,000/- as compensation instead of the imprisonment of one year and to pay compensation of Rs.1,51,650/-. Accordingly, the sentence of imprisonment ordered by the Courts below are modified to that of payment of compensation of Rs.1,00,000/-. The petitioner shall pay the said amount within a period of four weeks from the date of receipt of a copy of this order directly to the respondent. It is made clear that if the petitioner fails to pay the said amount/or deposit in Court within the above stipulated period, he shall undergo

the period of sentence as imposed by the Appellate Court and this order will not enure to the benefit of the accused. .

11. With the above modification, the Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court V,
Chennai.

2. -Do- Through The Principal Sessions Judge,
Chennai.

3. XXIII Metropolitan Magistrate,
Saidapet, Chennai.

4. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

1 CC to Mr. B.R.Shankaralingam, Advocate SR.No. 34256

2 CCs to M/s. Kumar and Baskar, Advocate SR.No. 34072

Crl RC No. 1001 of 2010

SV (CO)
PSI (05.08.2015)