BAIL SLIP

The Petitioners/Accused 3 and 4 were directed to be released on bail in and by the Order of this Court dated 20.01.2015 made in M.P.No.1 of 2015 in Crl.R.C.No.35 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.35 of 2015

1.S.Muthukumar
2.M.John Kennedy ... Petitioners/Accused 3 & 4

Vs.

R.Rani ... Respondent/Complainant

Criminal Revision filed under section 397 and 401 Cr.P.C. praying to set aside the judgment passed by learned III Additional Sessions Judge, Chennai, in C.A.No.105 of 2014 dated 16.12.2014 confirming the order passed by learned Fast Track Judge I, Egmore, Chennai in C.C.No.27302 of 2004.

For Petitioners : Mr.L.Rajasekar

For Respondent : R.Rani - Party in Person

O R D E R

This revision challenges the judgment of learned III Additional Sessions Judge, Chennai, passed in C.A.No.105 of 2014 on 16.12.2014 confirming that of learned Fast Track Judge, I, Egmore, passed in C.C.No.27302 of 2004 on 02.04.2014.

2. It is the case of the respondent that petitioners/A3 and A4 and A2 were partners of a partnership firm by name M/s.Amman Enterprises/A1. They borrowed a sum of Rs.4,50,000/- from the respondent and towards repayment they issued a cheque bearing No.751675 dated 29.05.2004 drawn on Karur Vysya Bank for Rs.4,50,000/-. She presented it at Canara Bank, Nungambakkam branch, for payment on 21.07.2004. The same was dishonoured on 22.07.2004 as "funds insufficient" and such fact intimated on

24.07.2004. The respondent issued notice to the accused u/s. 138 and 141 of the Negotiable Instruments Act on 28.07.2004 giving 15 days time for the accused to pay the cheque amount. The petitioner/A3 evaded the service on 28.07.2004. Till date no payment has been made to the respondent. The sworn statement of the respondent/complainant was recorded and offence u/s.138 and 141 of the Act, were taken cognizance of and summons for appearance of the accused was issued. Petitioners and two others faced trial in C.C.No.27302 of 2004 on the file of learned Fast Track Judge I, Egmore.

3. Before the trial Court, the prosecution examined two witnesses and eleven exhibits were marked. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of materials before it, the trial Court rendered a finding of conviction and sentenced the petitioners to undergo one year S.I. and the cheque amount Rs.4,50,000/- was directed to be paid equally by A2 to A4. Since A1 is a firm no sentence was imposed. There against, these petitioners/A3 and A4 have filed C.A.105/2014 and A2 filed C.A.No.120/2014 on the file of learned III Additional Sessions Judge, Chennai. A common judgment was passed in both appeals. The appeal preferred by A2 was allowed, whereas the appeal preferred by petitioners herein was dismissed under judgment dated 16.12.2014. Against such finding, the present revision has been filed.

5. Heard learned counsel for petitioners and the respondent, party in person.

6. We are of considered view that the Courts below erred both on law and on facts. A reading of the complaint in the case informs that the necessary averment of the petitioners/accused being in charge of and responsible to the partnership firm in the conduct of its affairs has not been made. Though cited by learned counsel for respondent the judgment of Apex Court in Gunmala Sales Private Ltd vs. Anu Mehta & Ors, affirms the position that in the absence of such basic and necessary averment the complaint cannot be sustained. We are unable to accept the submission of respondent that Ex.D.2 the partnership deed of the firm produced by the accused informs that the first petitioner/A3 was the Managing Partner of the firm. A complainant whose basically is legally wanting cannot use a defence document as a prop. On facts, we find that the cheque is of the date 29.05.2004 and has been returned unclaimed on 22.07.2004. It is the admission of D.W.4 - Grade I Officer, Karur Vysya Bank, that A2 and first petitioner/A3 informed under letter dated 30.07.2004 that one of the partners by name Srinivasan had done away with thirteen signed cheques and hence

if such cheques were presented for payment the same are to be dishonoured. The said Srinivasan is none other than the brother of the complainant/respondent. It has been the defence case that the petitioners had withdrawn from the partnership in 2004 and the respondent/complainant and her brother had since brought the firm under their control and that cheques signed by petitioners had been misused towards foisting the case. The respondent, in the course of examination, had stated that she held a receipt relating to the cheque Ex.P.1 of date 25.09.2004 issued in her favour by A2 on 10.12.2005. Such receipt had not been produced before court.

7. In the circumstances, this court thinks it just and proper to hold in favour of the petitioners. Accordingly this revision shall stand allowed. Petitioner is acquitted from all charges. Bail bonds, if any, executed by petitioners shall stand cancelled. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kpr

To

1.The III Additional Sessions Judge,
Chennai.

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

3.Metropolitan Magistrate,
Fast Track Judge - I,
Egmore, Chennai.

Copy To : The Section Officer,
Criminal Section,
High Court, Madras.

+2cc's to Mr.R.Rani - Party in Person, S.R.No.65710
+1cc to Mr.L.Rajasekar, Advocate, S.R.No.65879

Crl.R.C.No.35 of 2015

AK(CO)
CA(04/02/2016)