

BAIL SLIP

The Petitioner/Accused namely K.Hariharan, s/o.Krishnan, was directed to be released on bail vide order dated 22.12.2010 and made in Crl.M.P.No.2 of 2010 in Crl.R.C.No.1294 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.1294 of 2010

K.Hariharan .. Petitioner/Appellant/Accused

Versus

Co-operative Housing Society,
Rasiputam rep. by its Secretary,
C.Kuppuraj .. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.52 of 2010 on the file of the learned Principal Sessions Judge, Namakkal, and set aside the order dated 12.11.2010 confirming the conviction and the sentence passed in S.T.C.No.169 of 2008 on the file of the learned Judicial Magistrate, Rasipuram, dated 11.09.2009.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.Palanisamy

ORDER

The petitioner is the accused and the respondent is the complainant.

2. The revision has been filed by the petitioner against the Judgment dated 11.09.2009 passed in Crl.A. No. 52 of 2010 on the file of the Principal Sessions Judge, Namakkal, confirming the Judgment dated 11.09.2009 passed in S.T.C.No.169 of 2008 on the file of the learned Judicial Magistrate, Rasipuram.

3. The case of the complainant, a Co-operative Housing Society that the accused in his financial transaction with the complainant,

borrowed a sum of Rs.1,00,000/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 09.11.2007. When the said cheque was presented for collection, the same was returned with an endorsement "insufficient funds". Therefore, a statutory notice was issued to the accused on 28.11.2007. Since no payment was made even 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 S.T.C. No. 169 of 2008 on the file of the learned Judicial Magistrate, Rasipuram. Ultimately, after trial, the trial court convicted both the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced the accused to undergo one year simple imprisonment and to pay a fine of Rs.3,000/- on the accused and in default to undergo Simple imprisonment for a period of six months. Aggrieved by the same, the accused has filed Crl.A. No.52 of 2010 before the learned Principal Sessions Judge, Namakkal and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, the petitioner has preferred the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused did not argue on merits but confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submits that the accused had no intention to cheat the society. Both the courts below have not properly adduced the evidence and came to the wrong conclusion which is erroneous.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioner has not chosen to sent any reply notice for the statutory notice issued on 28.11.2007. This aspect has been duly considered by both the courts below. Hence, there is no error of infirmity in the order passed by both the Courts below and prays for dismissal of the revision.

6. After some elaborate arguments, the learned counsel for the petitioner agreed to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. Learned counsel for the respondent has no serious objection for the submission made by the learned counsel for the petitioner.

7. I have perused the materials available on record.

8. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.3,000/- and in default to undergo simple imprisonment for a period of six months.

9. On a careful analysis of the entire records, it is clear that there was a financial transactions between the accused and the complainant. Only to settle the amount, the cheque in question was issued and when the same was presented, it was returned with an endorsement "insufficient funds". There is no dispute with regard to the issuance of cheque in question. Though it is the submission of the learned counsel for the petitioner that the cheque in question has been issued to some other financier as security, he has not chosen to examine the said financier. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

10. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence and also the fact that the petitioner is willing to settle the amount in question, I am of the view that instead of sending the petitioner to jail, in the interest of justice, he may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentenced is modified to that of payment of compensation to the tune of Rs.60,000/- (Rupees Sixty Thousand only). The petitioner is directed to pay the amount of Rs.60,000/- to the complainant, within a period of eight weeks from the date of receipt of a copy of this order. 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 Courts below and this order will not enure to the benefit of the accused.

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

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal Sessions Judge, Namakkal.
2. The Judicial Magistrate, Rasipuram.
3. Do thro' The Chief Judicial Magistrate, Namakkal.

+ 1 cc to Mr.R.Nalliyappan, Advocate SR 43238

+ 1 cc to Mr.M.S.Palanisamy, Advocate SR 43986

rsi(co)
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