

Bail Slip

The petitioner / Accused namely Shanmugasundaram was directed to be released on bail vide order dated 13.02.2009 made in CrI.M.P.No.1 of 2009 in CrI.R.C.No.139 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.7.2015

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

CrI.Revision Case No.139 of 2009

Shanmugasundaram

...Petitioner

vs

R.Prabhu

...Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. to call for the records in C.A.No.147 of 2008 on the file of the District and Sessions Judge, Fast Track Court No.III, Coimbatore dated 29.10.2008 and the conviction and sentence confirmed in S.T.C.No.2076 of 2006 on the file of the Judicial Magistrate No.I, Coimbatore dated 05.5.2008.

For Petitioner (Party-in-person) : No Appearance

For Respondent : No Appearance

ORDER

Petitioner, party-in-person not present. No representation for the respondent/ complainant. Even in the year 2009, this Court ordered notice to the respondent. But till date, notice was not served. AOS also not filed. No representation for the petitioner on several occasions. On 15.7.2015, when the matter was called, there was no representation for the petitioner. Hence, the matter was directed to be listed on 22.7.2015 under the caption for dismissal. On 22.7.2015 also, there was no representation for the petitioner. Hence, in order to given one more opportunity to the petitioner, the matter was adjourned to today. Even today when the matter is called, there is no representation for the petitioner. Hence, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not

appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits.

2. The complainant preferred a private complaint under Section 138 of Negotiable Instrument Act contending that the accused borrowed a sum of Rs.30,000/- from the complainant on 23.8.2005 and in order to discharge the above said sum, the accused issued a cheque dated 07.3.2006 for Rs.30,000/-. When the said cheque was presented, the same were returned with an endorsement 'insufficient funds'. Hence, the complainant sent a legal notice on 11.4.2006 asking the petitioner/accused to pay the amount. Since the petitioner/accused has not paid the amount even thereafter, the complainant preferred a complaint under Section 138 of N.I. Act and the same was taken on file by the learned Judicial Magistrate No.I, Coimbatore in S.T.C.No.2076 of 2006. After due trial, by judgment dated 29.10.2008, the learned Magistrate convicted the petitioner/accused under Section 138 of NI Act and sentenced him to undergo three months Simple Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one month simple imprisonment. Against which, the accused preferred a Criminal Appeal No.147 of 2008 and the same was also dismissed by the learned District and Sessions Judge, Fast Track Court No.III, Coimbatore by confirming the conviction and sentence passed by the trial Court. Aggrieved by the said judgment, the accused has preferred this Revision.

3. The petitioner, in the grounds of revision, has stated that except cheque, there was no other documents to show that he borrowed money from the respondent. It is also stated in the grounds that P.W.1 was not cross examined and no opportunity was given that he was advised to compromise the matter. Therefore, the conviction and sentence imposed by the Courts below are not correct.

4. Since no notice was served by the petitioner, none appears for the respondent.

5. I have perused the entire materials available on record.

6. On a perusal of the judgment passed by the Court below, it is clear that the petitioner has borrowed money from the respondent/ complainant. The appellate Court has categorically held that in the cross examination it was only suggested to the complainant that the accused did not borrow money from the complainant and that he did not issue any cheque to the complainant towards repayment of the loan. It was also pointed out that petition under Section 311 Cr.P.C was filed to recall P.W.1 for further cross examination and the same was also allowed. In spite of the same, the petitioner has not chosen to cross examine P.W.1. Further, as

rightly pointed out by the Courts below, no oral or documentary evidence have been adduced on the side of the petitioner / accused to rebut the presumptions. Mere denial by the accused that no money was borrowed cannot be sustained. Once the cheque is issued presumption under Section 118 and 139 of the Negotiable Instrument Act come into operation. Since the presumptions under Section 118 and 139 of the Negotiable Instruments have not been rebutted and disproved by the accused, it is clear that the borrowable has been proved by the respondent/complainant beyond reasonable doubt.

7. In such circumstances, I do not find any reason to interfere with the reasoned order of the Courts below.

8. In the result, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Coimbatore

2. Additional District and Sessions Judge,
Fast Track Court No.III,
Coimbatore

3. The Public Prosecutor,
High Court, Madras.

4. The Chief Judicial Magistrate,
Coimbatore.

Cr1.R.C.No.139 of 2009

RSI (CO)
PSI (20.08.2015)