

Bail Slip

The Petitioner/Accused namely D.Raj Pradeeplal was released on bail vide order dated 16.2.2009 made in CrI.M.P.No.1/2009 in CrI.R.C.No.216 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

CrI.Revision Case No.216 of 2009

D.Rajpradeeplal ...Petitioner

vs

P.M.Dharmaraj ...Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the judgment and conviction dated 05.02.2009 made in C.A.No.255 of 2008 on the file of the I Additional Sessions Judge, Erode confirming the judgment and Conviction dated 04.9.2008 made in C.C.No.150 of 2006 on the file of the Chief Judicial Magistrate, Erode and praying to set aside the same.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

No representation for the petitioner / accused as well as 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. On 19.6.2015, when the matter was called, there was no representation for the petitioner. Hence, the matter was directed to be listed today under the caption for dismissal. 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 in the course of business transaction, the accused purchased textiles from him for a sum of Rs.14,22,559/- and in order to discharge the above said sum, the accused issued two cheques dated 23.9.2005 and 20.10.2005 for Rs.1,00,000/- and 3,00,000/-respectively. When the two cheques were presented, the same were returned with an endorsement 'insufficient funds'. Hence, the complainant sent a legal notice on 14.3.2006 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 Chief Judicial Magistrate, Erode in C.C.No.150 of 2006. After due trial, by judgment dated 05.2.2009, the learned Magistrate convicted the petitioner/accused under Section 138 of NI Act and sentenced him to undergo two years Simple Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo three months simple imprisonment. Against which, the accused preferred a Criminal Appeal No.255 of 2008 and the same was also dismissed by the learned I Additional Sessions Judge, Erode 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 the disputed cheques were stolen by the employees and the same was handed over to the respondent /complainant. It is stated that the above fact has also been clearly stated in the reply notice sent by the petitioner. It is also stated in the grounds of revision that P.W.1 in his cross examination has admitted that the signature of the petitioner was not found in the invoice produced by him. 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 order passed by the Court below, it is seen that the respondent / complainant in his cross examination has specifically denied the aspect regarding stolen cheques. As rightly pointed out by the Courts below, if really the cheques were stolen from the custody of the petitioner/ accused, he must have taken some steps to prove the same. However, the accused has not preferred any police complaint regarding the stolen of cheques. Further, the complainant/ P.W.1 has categorically stated that these two cheques were given for the purchase of materials from him. Moreover, during cross examination, the complainant/respondent admitted that he was acquainted with the accused for the past two years. Though the respondent admits that the signatures of the

petitioner/ accused did not find place in the invoice produced by him, he proved the signature of the accused by producing the delivery notes. Therefore, it is clear that the transaction has been proved by the respondent/complainant beyond reasonable doubt. The Courts below after taking into consideration the transaction and the payment, has come to a conclusion that the variation in the signatures in Ex.P1, P2 and D1 will not vitiate the case of the respondent/ complainant as Ex.D1 is of the year 1999 whereas the Exs.P1 and P2 are all of the year 2005. Since Exs.P1 and P2 have been issued after six years from the date of issuance of Ex.D1, there is every chance for small variation in the signatures. Therefore, both the Courts below have rightly held that the petitioner/ accused has not taken any steps to prove that the signatures found in Ex.P1 and P2 are not his signatures and the signature found in the delivery notes Ex.P11 look very much identical to that of the signature found in Exs.P1 and P2.

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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. I Additional Sessions Judge,
Erode.

2. The Judicial Magistrate No.I,
Erode.

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Cr1.R.C.No.216 of 2009

RSI (CO)

PSI (23.07.2015)