

Bail Slip

The Petitioner/Appellant/Accused viz. Mohammed Hussain, 53 years, S/o. Uduman, Erode - 11, be and hereby directed to released on bail as per order dated 06/05/2009 made in M.P. No.1/2009 in CrI.R.C.No.470/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CrI.R.C.No.470 of 2009

Mohammad Hussain ... Petitioner/Appellant/Accused

Vs.

M/s.Chemax Tanners Pvt Ltd.,
by its Managing Director, V.Sivakumar
Rep. by its Power of Attorney/ Manager,
A.Elangovan ... Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code to call for the records and set aside the conviction imposed in the judgment dated 30.03.2009 made in C.A.No.276 of 2008 on the file of the First Additional Sessions Court, Erode confirming the conviction imposed in the judgment dated 29.09.2008 made in C.C.No.318 of 2007 on the file of the Judicial Magistrate No.I, Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.R.Palani Saamy

सत्यमेव जयते
O R D E R

The revision is filed against the conviction made under Section 138 of the Negotiable Instruments Act.

2.The accused is the revision petitioner. The main contention of the accused is that the complainant had a transaction in a Madagascar Company for supply of scrap material, since he was a resident of Madagascar and also that person is from very same locality where the complainant lives. He assured him in the transaction and an amount of 50,000 US Dollers were paid to the Madagascar company even though the goods does not reach India. Therefore trouble arose between the parties. He was asked to negotiate. He negotiated and thereafter, the Madagascar Company agreed to repay the 50,000 US Dollers. That 50,000 US Dollers were paid by way of two cheques in the name of the

company at Madagascar. But, those two cheques were dishonoured. Therefore, initially, he took an attempt to take local action by issuing a legal notice. Thereafter, since he could not pay for the Lawyer for continuance of that case in Madagascar, further course of action was not taken for the cheque dishonoured case at Madagascar.

3. In the meanwhile, he had another transaction with the local company here in T.Nagar, Chennai. The complainant's friend, who is an Advocate and who also accompanied the complainant to Madagascar was also the Advocate concerned in a transaction between the petitioner and a third party company at Madras. Four cheques of the petitioner were issued in lieu of the settlement arrived at between the parties by the petitioner and third party. It is the case of the petitioner that two of the cheques out of the four cheques which were issued to the Advocate has been mis-used, had been given to the complainant and only on that basis the complainant has filed a case. Therefore, there is no payment due for which the cheque was given by the accused was the main defence.

4. Secondly, he would also contend that when the transaction was admitted between the third party, when the amount is not due and payable, it is the duty of the complainant to prove that there is actual amount due and payable by the accused which was not been fully complied by the complainant. Therefore, the lower court had only taken presumption to convict which is not legally tenable.

5. Thirdly, he would contend that the address to which the notice was issued is not the correct address. Therefore, when the notice itself has not been properly and correctly issued, the cause of action for the very complaint does not arise and on these three grounds, he would mainly contend that the lower Court had failed in granting conviction.

6. Above all these things, he would contend that he himself examined as P.W.1. He put forth all these things by producing documents Ex.D1 to Ex.D11 including the agreement which was entered between him and third party to which the Junior of that Advocate is an attester and it was prepared by that particular Advocate who accompanied the complainant to Madagascar.

7. The learned counsel for the respondent would mainly contend that first of all the notice has been duly served, signature is there. Infact, even on the naked eye comparison, the signature found in the acknowledgement card as well as in the cheque are identical, which was also taken into consideration by the Courts below. The non-sending of the reply to the statutory notice is fatal to the case. Without even giving a reply to this concocted defence, which is now sought for cannot be accepted.

8. Secondly, even according to the revision petitioner, the transaction between the complainant and the company at Madagascar is admitted. He also admits as per his own version that he accompanied

the person appointed by the complainant to collect the money at Madagascar. It is also admitted that at Madagascar he has paid two cheques for 50,000 US Dollars to the credit of the petitioner. But all these things happened in April, 2006. The present cheque in question has been given only after the negotiations between the parties much later in the month of December, 2006. Now the theory put forth as if the cheque was mis-used by the Advocate cannot be accepted for the simple reason that no steps have been taken to initiate any action against the alleged Advocate. It was mis-used. Not even a notice has been issued to the Advocate to show that it has been mis-used nor any steps have been taken to summon him or to examine him to show how the cheques have been handed over. Under those circumstances, the lower Courts have rightly held once the cheque has been admitted signature admitted, the presumption under Section 138 of the Negotiable Instruments Act would equally carefully apply only to the complainant for rebuttal having let in evidence. The evidence which have not been produced only indicate that the entire transaction as admitted by the petitioner himself is that he has to pay the money and for that money, the present cheque was issued. Under those circumstances, both the Courts correctly held that the petitioner is liable for conviction.

9. Heard both the parties.

10. On a careful consideration of the entire documentary evidence as well as the judgments of the Courts below, one thing is clear. The statutory notice has been duly served on him. The acknowledgement card is produced. The only defence is that he has stated in the chief examination that this is not his address for which no document is produced. No other evidence is produced to say that he is not residing in that address. He says that he is a person living in Madagascar. Not even a simple passport is produced. The address in the passport would have clearly indicated it. Even that basic step has not been done in this case. Therefore, the first presumption is statutory notice is duly served. When the statutory notice has been served, it is the duty cast on him to give reply putting forth his defence. The non-reply in this case which would be very fatal one.

11. Secondly, he admits under exhibits Ex.D1 to Ex.D11 that there was a transaction between the complainant and the company at Madagascar. He also admits that he is an agent pointed out by the complainant to transact with that company. He has admitted that the company has paid two cheques to the value of 50,000 US dollars for him to be paid at Madagascar. Those cheques have been dishonoured. Unfortunately, he has not even taken any single step including writing a letter to the complainant that, the amount which was paid to him by the company at Madagascar was the amount to be paid to the complainant and for which have taken necessary steps. He needed money for the Court proceedings. He has not even asked for which he conveniently leaves those cheques dishonoured at Madagascar to go scot free. But, whereas, subsequently, the present cheques are

issued much later after eight months. Cheque is admitted. Signature is admitted. What is now stated is it was given to the Advocate in respect of another transaction between a third party, which is again the amount is same. What he would now state is that was mis-used by the Advocate. Is it not a burden on him to take necessary action against that Advocate for mis-using the cheque atleast by giving a notice or giving a complaint to the Bar Council or giving a complaint to the Police. Nothing has been done. Can we expect a person against whom a sum of Rs.30,00,000/- claim has been made in two cheques which has been entrusted to an Advocate, can he especially, he being a person working in Madagascar, a worldly wide person knowing fully well his legal right can keep quiet. Therefore, in this case, where both the Courts had come to the conclusion initial presumption under Section 138 of the Negotiable Instruments Act for payment of the money and that theque has been paid only for that is duly properly appreciated. Hence, I do not find any reason to interfere with the reasoned order of the Courts below.

12.At this point of time, the learned counsel for the petitioner would only contend that the petitioner seeks for mercy and that there is no point in sending him to jail because, the entire amount is liable to be paid.

13.Considering the plea made by the learned counsel for the petitioner, this Court directs the petitioner to pay the sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) to the respondent/ complainant, within a period of four months from the date of receipt of a copy of this order either directly to the respondent or by depositing in Court. In the event of the petitioner paying the amount of Rs.30,00,000/- to the respondent/ complainant, the conviction and sentence imposed by the trial Court and confirmed by the lower appellate Court shall stand set aside. In the alternative, if the petitioner fails to pay the amount within the stipulated time, the conviction and sentence granted by the Courts below shall stand confirmed. The criminal revision case is accordingly disposed of.

Sd/-

Asst.Registrar (LA)

/true copy/

Sub Asst. Registrar

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To

- 1.The First Additional Sessions Court, Erode.
- 2.The Judicial Magistrate No.I, Erode.

+1 cc to Mr.N.Manokaran, Advocate, sr.37640
+1 cc to Mr.A.R.Palanisamy, Advocate, sr.37578

Cr1.R.C.No.470 of 2009

vgi(co), kra(26/08)