BAIL SLIP

The Appellants/Accused namely R.Mahalingam, S/o.Rangan, was directed to be released on bail as per the order of this Court dated 12.08.2010 in M.P.No.1/2010 and M.P.No.1/2010 in Crl.R.C.No.837 and 838/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 837 and 838 of 2010

R.Mahalingam .. Petitioner in both Criminal Revision Cases/Accused

Versus

T.Kannan .. Respondent/Complianant in Crl.R.C.No.837/2010

M.Prabhakar .. Respondent/Complainant in Crl.R.C.No.838/2010

Criminal Revision Cases filed under Sections 397 and 401 of Cr.P.C. against the judgments dated 15.07.2010 in C.A.Nos. 75 and 74 of 2009 on the file of the learned Principal Sessions Judge, Namakkal, Namakkal District, confirming the judgment and sentence passed in S.T.C.Nos. 397 and 223 of 2007 on the file of the learned Judcial Magistrate No.II, Namakkal, Namakkal District, dated 17.09.2009.

For Petitioner : Mr. E.Kannadasan

For Respondents : Mr. S.Parameswaran

COMMON ORDER

The petitioner was convicted by the learned Judicial Magistrate No.II, Namakkal, Namakkal District, in S.T.C. Nos. 397 and 223 of 2007, dated 17.09.2009, for an offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year. Challenging the same, the petitioner filed Criminal Appeal Nos. 75 and 74 of 2009 before the learned Principal Sessions Judge, Namakkal, Namakkal District, which were dismissed on 15.07.2010, confirming the conviction and sentence imposed by the Trial Court. As against the same, the petitioner has filed the present Criminal Revision Cases.

2. According to the respondents/complainants, the petitioner/accused is their friend. On 07.08.2006 and 12.08.2006 respectively, the petitioner borrowed a sum of Rs.4,50,000/- and

Rs.5,00,000/- as hand loan from the complainants for his family expenses. To discharge the above said loan amounts, the petitioner/accused issued cheques bearing cheque Nos.0023790 and 0023789 drawn in State Bank of India, Kailasapuram Branch, Trichy District. The respondents presented the cheques for collection, but, the cheques were returned for want of insufficient fund. The respondents/complainants issued statutory notices to the petitioner demanding to repay the amount within 15 days. The petitioner received one notice, for which, he did not give any reply. The petitioner evaded to receive another notice and the same was returned with an endorsement that "intimation was given not claimed". Hence, the respondents filed complaints under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate No.II, Namakkal, Namakkal District and the cases were tried in S.T.C.Nos.397 and 223 of 2007. The Trial Court on finding that the accused has failed to rebut the presumption contemplated under Section 139 of the Negotiable Instruments Act has ultimately held that the complainants have proved the guilt of the accused beyond all reasonable doubt and sentenced the accused to undergo simple imprisonment for one year. Having aggrieved against the judgements of the Trial Court, the petitioner/accused preferred Criminal Appeal Nos. 75 and 74 of 2009 before the learned Principal Sessions Judge, Namakkal, Namakkal District, which were dismissed, confirming the conviction and sentence imposed by the Trial Court. Hence, the present Criminal Revision Cases.

3. The learned counsel appearing for the petitioner would submit that the petitioner was employed as a Cashier in the State Bank of Bank. He would further add that the cheques, which were allegedly in the hands of the complainants, are not the cheques, which were given to him by the petitioner, but, in fact, it was a loan transaction between one Manoharan, who is an employee of Bharath Heavy Electricals Limited and the petitioner. The petitioner borrowed the sum of Rs.4,50,000/- and Rs.5,00,000/- on 07.08.2006 and 12.08.2006 respectively from Manoharan as hand loan from the complainants to meet out his family expenses. At the time of borrowing the amount, the said Manoharan obtained cheque books. The loan amount borrowed from the said Manoharan was repaid by the petitioner. When the petitioner asked Manoharan to return the cheque books and other documents, he did not return back the same to the petitioner. The learned counsel would further submit that the transaction took place in Mannargudi, whereas, the complainants are from Namakkal, with whom, the petitioner has got no connection. He would further add that inspite of payment having been made by the petitioner to Manoharan, the cheques were not returned to the petitioner, probably, the complainants, who are the close friends of Manoharan, would have got the cheques from Manoharan and misused the cheques by presenting the same for collection, but, the cheques were dishonoured. He would further point out that no doubt, the respondents/complainants issued statutory notices to the petitioner demanding to repay the amount within 15 days, but, the petitioner even though received a notice, he did not give any reply, but, he made a publication with regard to the non-handing over of the cheques by the respondents, which vital point has not been considered by the

Courts below and therefore, the conviction based on non-payment of cheques is not legally sustainable. The defence put forward by the petitioner has not been considered by the Courts below in a proper perspective, hence, the present revisions were filed.

4. The learned counsel appearing for the respondents would contend that the petitioner has not given any reply to the statutory notices, especially, he being a Bank employee, he knows the intricacies of the law, he ought to have been diligent, but, conveniently, he makes a publication, that too, after the issuance of statutory notices, therefore, it is only an afterthought and to circumvent the process, he created this impression, therefore, both Courts below have rightly come to the conclusion. Above all these things, the petitioner has neither chosen to send any reply nor produced any evidence to show that the loan transaction is only between Manoharan and the petitioner and even that amount has been settled by evidentiary value. He would further add that the evidence of D.W.2/Shanmugam, Branch Manager of State Bank of India, cannot be believed and it was rightly not believed by both Courts below and was rightly rejected.

5. I have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents. By consent, the Criminal Revision Cases are taken up for final disposal.

6. First of all, it is pertinent to note that the petitioner is a Bank employee. He knows the nuances of dishonouring of the cheque. He is expected to give immediately a reply for the statutory notices. The non-giving of reply to the statutory notices is fatal to the case of the petitioner. The petitioner conveniently states that the loan amount was borrowed from one Manoharan, who is an employee of Bharat Heavy Electricals Limited, and inspite of payment having been made by the petitioner to Manoharan, the cheques were not returned to the petitioner and therefore, the petitioner made a publication with regard to the non-handing over of the cheques by the respondents. Admittedly, the publication was effected only after the statutory notices were received by the petitioner and after the period for grant of reply was over and therefore, it is only an afterthought by the petitioner. Having lost his opportunity to give reply notices, the petitioner has come forward with an inquisitive method, as if the cheques were not returned to him and probably, the complainants, who were the close friends of Manoharan, would have got the cheques from Manoharan and misused the cheques by presenting the same for collection. Both Courts below have not accepted the theory put forward by the petitioner and has given detailed reasons for rejecting the same. Further more, both Courts below has rightly disbelieved and rejected the evidence of D.W.2/Shanmugam, Branch Manager of State Bank of India, stating that he has not established the payment of money to the proper person.

7. In the light of the above, I do not find any reason to interfere with the reasoned judgments passed by the Lower Appellate Court and the judgments of the Lower Appellate Court stand confirmed.

Accordingly, these Criminal Revision Cases are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

paa

To

1.The Principal Sessions Judge,
Namakkal District.

2.The Judcial Magistrate No.II,
Namakkal District.

3.The Chief Judicial Magistrate, Namakkal

1 cc to Mr. E.Kannadasan ,Advocate, SR.No.18910
2 cc to Mr.S.Parameswaran ,Advocate, SR.No.18761

Crl. R.C. Nos. 837 and 838 of 2010

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pmk.22.4.2015