

Bail Slip

The Appellant/Accused namely S.E. Ramesh, S/o. Easwaramoorthy Gounder, was directed to be released on bail as per order of this court dated 29.04.2008 in MP.1/08 in Crl.R.C.No.635/08 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl. R.C. No. 635 of 2008

S.E.Ramesh Petitioner

Versus

Krishnaveni ... Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code against the Judgment dated 12.02.2008 made in Crl.A.No.324 of 2007 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Coimbatore at Thiruppur, confirming the judgment dated 04.07.2007 made in S.T.C.No.750 of 2005 on the file of the Judicial Magistrate No.I, Thiruppur.

For Petitioner : Mr.K.Ethirajulu
For Respondent : Mr.M.N.Balakrishnan

ORDER

This Criminal Revision Case is filed by the petitioner/accused questioning the correctness of the Judgment dated 12.02.2008 made in Crl.A.No.324 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore, confirming the judgment dated 04.07.2007 made in S.T.C.No.750 of 2005 on the file of the Judicial Magistrate No.I, Thiruppur.

2. The respondent/complainant filed a private complaint alleging that the petitioner/accused issued a cheque dated 01.11.2004 for Rs.5,00,000/- towards the discharge of the loan availed by him from the complainant on 03.04.2004. The cheque when presented for collection dishonoured for insufficient funds. The respondent issued statutory notices on 23.11.2004 and 01.12.2004 to the petitioner and thereafter, the complaint under Section 138 of the Negotiable Instruments Act was filed. After trial, the Trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced the petitioner/accused to undergo rigorous imprisonment for one year and ordered to pay the cheque amount of Rs.5,00,000/- as compensation to the complainant. On

appeal, the first Appellate Court, confirmed the judgment of conviction and sentence passed by the Trial Court and hence, the Criminal Revision Case.

3. Mr.K.Ethirajulu, learned counsel for the revision petitioner would contend that the petitioner/accused has repaid the entire loan amount, for which, he was given the stamped receipt, dated 14.12.2004, which was marked as Ex.A.2, should be given due credence to. Earlier, in the Trial Court, though, a petition in Cr.M.P.No.5401 of 2007 was filed seeking to send the documents in Exs.A.1 and A.2 for expert opinion, the said petition was dismissed. As against which, the petitioner/accused filed Crl.R.C.No.888 of 2007 before this Court. During the pendency of the said revision, the judgment was pronounced by the Trial Court. He would further contend that if the documents viz., Exs.A.1 and A.2 were sent for expert opinion, he would have been able to establish his case that the entire loan amount has been paid, but, the same was not considered by the Court below.

4. Mr.M.N.Balakrishnan, learned counsel appearing for the respondent/ complainant pointed out that both Courts below have categorically stated that if really, the petitioner/accused has repaid the entire loan amount within 15 days from the date of the issuance of statutory notice, would it have been possible for the petitioner/accused to keep quiet without even giving reply to the statutory notice for the entire period till the case is taken up, that too without asking for return of the cheque. Even, during questioning under Section 313 Cr.P.C. is made, it is never stated by the accused that the entire loan amount has been paid. Till the cross-examination of the complainant is over, no where, it is pointed out that the entire loan amount has been paid. This document viz., the stamped receipt, dated 14.12.2004, came into picture only at the fag end, when Crl.A.No.364 of 2006 was filed by the complainant against the dismissal of the complaint, this Court by judgment dated 15.09.2006 allowed the said appeal with a direction to the Trial Court to complete the trial within a period of six months from the date of receipt of the order and therefore, it is only an afterthought, there is no basis and hence, both Courts below have rightly convicted the petitioner/accused and sentenced to undergo imprisonment and directed to pay compensation as stated as paragraph No.1 of this order.

5. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. When we analyse the entire evidence on record as well as the judgment of the Courts below, it is crystal clear that the petitioner/accused had loan transaction with the complainant/respondent. The petitioner has also not disputed his signature in the cheque in question. The petitioner is now taking umbrage under the alleged payment of money by producing the stamped receipt, dated 14.12.2004. As rightly pointed out by both Courts below, the petitioner/accused did not issue a reply notice to the statutory notices sent by the complainant/respondent. While questioned under Section 313 Cr.P.C., the petitioner/accused has not stated that the entire loan amount has been repaid. Till the cross-

examination of P.W.1/complainant is over, the accused has not asked for return of cheque. If really according to the petitioner/accused, the transaction between the petitioner/accused and the respondent/complainant came to an end by due repayment of the loan amount, what prevented the petitioner/accused from getting back the cheque. Admittedly, the petitioner has not issued the respondent with any notice seeking to return back the cheque and there is no explanation as to why he allowed the cheque to remain with the complainant. Further, admittedly, no document has been produced before the Court to show that the petitioner/accused asked for the return of the cheque. Therefore, it could be easily inferred that the stamped receipt, dated 14.12.2004, is only an afterthought and there is no basis at all and hence, the Trial Court has rightly convicted the petitioner/ accused under Section 138 of the Negotiable Instruments Act and sentenced the petitioner/accused to undergo rigorous imprisonment for one year and ordered to pay the cheque amount of Rs.5,00,000/- as compensation to the complainant and the same came to be rightly confirmed by the Appellate Court.

7. In the result, this Criminal Revision Case is dismissed confirming the judgment of conviction and sentence passed by the Appellate Court dated 12.02.2008. The Trial Court is directed to issue necessary warrant to the petitioner to secure his presence for completion of the balance sentence. It is needless to mention that the period of sentence already undergone by the revision petitioner/accused is ordered to be given set off under Section 428 (c) of Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.IV, Coimbatore.
 - 2.The Judicial Magistrate No.I, Thiruppur.
 3. -do- Through The Chief Judicial Magistrate, Coimbatore.
- + 1 cc to Mr.K.Ethirajulu, Advocate Sr.27582

Cr1.R.C.No.635 of 2008

KK(CO)
EU 01.07.15