

Bail Slip

The Appellant/Accused namely P.S.Chellamuthu, S/o. Raghupathy, chellamuthu was directed to the released on bail as per the order of this court dated 14.08.2008 and made in Crl.M.P.1/2008 in Crl.R.C.No.908/2008 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.4.2015

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

CRL.R.C.NO.908 of 2008

R.Chellamuthu

.. Petitioner/Accused

Versus

1. M/s. Arun Shakthi Investments
rep.by its Managing Partner
Nagarajan, No.6, Cheran Nagar
Kandampalayam, Coimbatore.

2. The State rep.by
Inspector of Police
G.3, Police Station
Coimbatore.

.. Respondents/Complainant and
Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C, against the judgment made in C.A.No.422 of 2007 on the file of the Additional District and Sessions Judge - cum - Fast Track Court No.3 at Coimbatore dated 02.6.2008 confirming the Judgment made in C.C.No.370 of 2000 on the file of the Judicial Magistrate No.1, Coimbatore dated 06.9.2007.

For Petitioner : Mr.J.R.Prabhakaran

For R1 : Mr. V.Parthiban
legal aid counsel

For R2 : Mr.R.Prathap Kumar
Government Advocate (Criminal side)

ORDER

The petitioner has filed the above Criminal Revision Petition as against the judgment dated 02.6.2008 made in C.A.No.422 of 2007 on the file of the Additional District and Sessions Judge- cum- Fast Track Court No.3, Coimbatore confirming the judgment dated 06.9.2007 made in C.C.No.370 of 2000 on the file of the Judicial Magistrate No.1, Coimbatore.

2. Accused is the revision petitioner and the first respondent is the defacto complainant. The accused borrowed a sum of Rs.20,000/- from the first respondent for which, he executed pronote in favour of the first respondent. Thereafter, he borrowed another loan for Rs.1,00,000/- by executing fresh pronote. Towards the discharge of the said loan along with interest, the accused issued a cheque for Rs.1,90,500/-. When the said cheque was presented for encashment, the same was returned with an endorsement "insufficient funds". Thereafter, after issuing statutory notice, the complainant preferred complaint under section 138 of the Negotiable Instruments Act and the same has been taken cognizance in C.C.No.370 of 2000 by the learned Judicial Magistrate No.1, Coimbatore. After due trial, the learned Metropolitan Magistrate convicted the petitioner/accused and sentenced him to undergo 4 months simple imprisonment and also to pay a sum of Rs.2,000/- each, as fine and in default to undergo 1 month simple imprisonment each. Aggrieved over the said judgment and conviction, the petitioner/accused preferred an appeal before the Additional District and Sessions Judge-cum-Fast Track Court No.3, Coimbatore and the same was also dismissed. Against which, the petitioner/accused is before this Court.

3. The learned counsel for the petitioner/accused vehemently argued that the Courts below have not taken into consideration all the aspect raised by the petitioner especially when the execution of pronote has been admitted, the complainant ought to have produced the same to substantiate his case. When the pronote has not been produced, the courts below ought to have taken adverse inference. The learned counsel for the petitioner also contended that since the proceedings under Tamil Nadu Protection of Interests of Depositors (In Financial Establishment) Act, 1997 is pending before the TNPID Court, the proceedings invoking Section 138 of the Negotiable Instruments Act, would amount to double jeopardy. Therefore, according to the learned counsel, conviction imposed by the Courts below is wrong.

4. Mr.V.Parthiban, the learned legal aid counsel appearing for the first respondent submitted that the Courts below, after considering the entire evidence and materials placed before it, had rightly convicted the petitioner. The learned legal aid counsel also submitted that since there is no recovery of money, the proceedings under Section 138 of Negotiable Act would apply and that it would not amount to double jeopardy.

5. The learned Government Advocate submitted that both the Courts below have concurrently found that the alleged cheque has been issued by the accused and the same was returned with an endorsement insufficient funds. According to the learned Government Advocate, the courts below analysed the evidence available on record and came to a correct conclusion. Therefore, the order passed by the courts below need not be interfered with.

6. I heard the submission made by the learned counsel on either side and perused the materials available on record including the judgments of the Courts below.

7. The main ground of attack raised by the learned counsel for the petitioner is that when the execution of pronote has been admitted, the complainant ought to have produced the same to substantiate his case. When the pronote has not been produced, the courts below ought to have taken adverse inference.

8. In the evidence, the first respondent/ complainant would state that pronote has been executed in favour of him and the same has been discharged and receipt also given. Thereafter, the present cheque has been given by the accused and when the said cheque has been presented for encashment, the same has been returned with an endorsement 'insufficient funds'. The said aspect has been clearly established before the Courts below. Further, as rightly pointed out by the learned legal aid counsel in the present case, there is no recovery of money. Since there is no recovery of money and criminal offence is made out, the proceedings invoking Section 138 of the Negotiable Instrument will not amount to double jeopardy. Therefore, the argument of the learned counsel for the petitioner on that aspect is not sustained.

In view of the above facts, I do not find any reason to interfere with the reasoned judgments passed by the courts below. Accordingly, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ga

To

1. The Additional District and Sessions Judge
- cum - Fast Track Court No.3,
Coimbatore
 2. The Judicial Magistrate No.1,
Coimbatore.
 3. The Inspector of Police, G-3, Police Station, Coimbatore.
 4. -do- through The Chief Judicial Magistrate, Coimbatore.
 5. The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr.V.Parthiban, Advocate SR.19816

BKY (CO)
EU 20.05.2015

<https://hcservices.ecourts.gov.in/hcservices/>

Cr1.RC No.908 of 2008