

## BAIL SLIP

The Petitioner/Accused namely Ravishankar S/o.Palaniswamy was directed to be released on bail as per order of this Court dt.8.7.08 in crl.MP.No.1/08 in CrI.RC.No.923/08 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-06-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 923 of 2008

Ravishankar

... Petitioner

Versus

1. Sasikanth

Power agent of M/s. V.S. Tex  
by its Partner P. Vetrivel  
No.59, K.K.S. Building  
Muthu Nagar 2nd Street  
Tirupur

2. State represented by  
Inspector of Police  
Tirupur North Police  
Tirupur

.. Respondents

Petition filed under Section 397 and 401 of Criminal Procedure Code to set aside the judgment dated 25.01.2008 passed in Criminal Appeal No. 424 of 2007 on the file of Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore at Tirupur confirming the judgment dated 04.09.2007 made in S.T.C. No. 1545 of 2006 on the file of Judicial Magistrate No.I, Tirupur.

For Petitioner : Mr. E. Bubesh

For Respondents : Mr. S.S. Swaminathan for R1

Mr. V. Arul

Government Advocate (Crl.side) for R2

ORDER

The first respondent herein has filed a private complaint under Section 138 of The Negotiable Instruments Act against the accused/revision petitioner herein contending that there were past transaction between the complainant/first respondent and the accused/revision petitioner herein in purchasing of yarn and during the course of such business the complainant/first respondent herein supplied yarn as per the request of the accused/revision petitioner and invoice was raised. However, the accused/revision petitioner did not pay the amount towards supply of yarn. After repeated demands, the accused/revision petitioner issued a cheque

dated 11.08.2005 for a sum of Rs.2,24,078/- towards purchase of yarn and on presentation of the cheque, it was dishonoured for the reason "account closed". Therefore, on 04.02.2006, the complainant/first respondent issued a statutory notice. Even though the statutory notice was received by the accused/petitioner herein, he has neither paid the cheque amount nor sent any reply. In those circumstances, the complainant/first respondent herein filed the private complaint in S.T.C. No. 1545 of 2006. Upon trial, the trial court found the petitioner/accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of two years and to pay a sum of Rs.2,25,000/- as compensation to the complainant/first respondent herein under Section 357 (3) of Code of Criminal Procedure. Aggrieved by the same, the revision petitioner filed Criminal Appeal No.424 of 2007 and it was dismissed by the Appellate Court on 25.01.2008. As against the same, the present Criminal Revision Case is filed. Pending the above Criminal Revision Case, by order dated 08.07.2008, this Court suspended the substantial portion of sentence imposed against the petitioner.

2. The learned counsel appearing for the petitioner would vehemently contend that the complainant/first respondent is bound to prove the past transaction between the accused/revision petitioner and the complainant/first respondent. According to the learned counsel for the petitioner/accused, the complainant, in his deposition, has deposed that there were business transaction between the complainant and the accused from 2006. While so, the complainant failed to prove as to how the cheque could have been issued on 11.06.2005 when admittedly there were transaction between the parties only from 2006. It is next contended on behalf of the petitioner that even though the cheque was dated 11.06.2005, for the reasons best known, the complainant presented it only on 23.01.2006 after a period of four months. This delay on the part of the complainant in presenting the cheque after four months is unexplained and it vitiates the complaint. Further, the trial court as well as the appellate Court failed to note that the complainant did not make any entry in the ledger about the purchase price and quantity of the goods. Further, to support the entries in the ledger, the complainant did not produce the day book. In any event, the complainant did not produce any material evidence to show the supply of goods to the accused/petitioner herein and therefore, the entire complaint is vitiated.

3. In support of the above contentions, the learned counsel for the accused/revision petitioner relied on the decision of the Honourable Supreme Court in the case of (John K. Abraham vs. Simon C. Abraham and another) (2014) 2 Supreme Court Cases 236 to contend that in a proceeding under Section 138 of the Negotiable Instruments Act, for the purpose of drawing a presumption as contemplated under Section 118 read with Section 138 of the said Act, the burden lies on the complainant to show that he had the requisite funds for advancing the loan amount and that the cheque was issued by the accused for repayment of the said amount. If the complainant discharges such burden, thereafter, the burden shifts on the accused/revision petitioner to disprove the same. Relying on the aforesaid decision, the learned counsel for the accused/petitioner

would contend that in the present case, the complainant/first respondent has not filed the income tax return evidencing the liability of the accused towards supply of goods and the payment to be made by the accused thereof.

4. Per contra, the learned counsel for the complainant/first respondent has read over the relevant portion of the cross-examination of the complainant wherein he had categorically replied that "it is false to state that there is no transaction between the complainant and the accused for a long time and the complainant firm was established in March 2005". When the deposition was recorded in Tamil, it was recorded in such a way that it gives an impression that the transaction between the parties is only from 2006. A full stop deployed in between two sentence, instead of a comma, has led to such confusion in reading the deposition. In any event, the complainant has categorically deposed that there was a transaction between the parties and to discharge the past debt, the cheque in question was issued by the accused/petitioner herein. Further, the accused/ petitioner did not dispute the signature in the cheque. As contended by the accused/petitioner, the delay of four months in presenting the cheque will not in any way vitiate the complainant especially when it was entertained and processed by the banker. The petitioner is estopped from raising these contentions when he did not give any reply to the statutory notice sent by the complainant/first respondent herein. The complainant produced the ledger account to prove the transaction between the parties and discharged their burden relating to the transaction between the parties. On appreciation of such evidence, both the courts below have rendered a judgment of conviction against the accused/petitioner herein and it need not be interfered with by this Court.

5. I heard the counsel for both sides and perused the material records placed. At the outset, the deposition of the complainant before the trial court is required to be looked into so as to conclude whether the transaction between the parties has been proved or not. In the cross-examination of the complainant on 31.07.2007, he deposed as follows:-

"புகாரிலும் முன் விசாரணையிலும் பல வருடங்களாக எதிரிக்கும் எங்களுக்குத் தொழில் தொடர்பு, இருந்து வருகிறது என்று சொல்லியிருப்பது தவறு என்றால் சரியல்ல. வாதி நிறுவனம் மார்ச் 2005 அன்று தான் தொடங்கப்பட்டது."

6. This piece of deposition of the complainant would go to show that the complainant categorically denied the suggestion that there was no business transaction between the parties from 2005 and that the complainant firm was established in the year 2005. However, according to the counsel for the first respondent/complainant, the sentence was split in to two by employing a full stop, instead of comma.

7. It is true that if the two sentences are read together by employing a comma, it would give an impression that the complainant firm was established in the year 2005 and the complainant had denied the suggestion that that there is no transaction between the complainant and the accused from 2005. In any event, the complainant has proved that there was transaction between the parties and discharged their initial burden. The presumption is that there was transaction between the complainant and the accused during which the complainant supplied certain goods for which the cheque in question. This is more so that the accused did not deny the issuance of the cheque or the signature thereof. The accused also did not give any reply notice to the statutory notice sent by the complainant. Even though it was contended before the courts below that the cheque was forcibly obtained from the accused, as rightly pointed out by the courts below, if it is true, the accused could have intimated the bankers to stop the payment of the cheque or taken some other steps, but it was not done.

8. As regards the contention of the counsel for the accused/petitioner that the cheque was presented after four months and therefore it vitiates the complaint, such argument has to be rejected for the simple reason that if the cheque was not valid or the validity of the cheque expired, the bank would not have entertained the cheque and it would have returned the cheque by specifically mentioning the reason for return of the cheque. However, in the present case, the cheque was entertained and processed by the bankers and it was dishonoured for the reason that "the account was closed". This would only indicate that the cheque in question was issued by the accused from an account which is no longer in existence and it was valid as on the date of its presentation.

9. The decision cited by the learned counsel for the accused/revision petitioner in the case of (John K. Abraham vs. Simon C. Abraham and another) (2014) 2 Supreme Court Cases 236 does not have any application to this case. In that case, the Honourable Supreme Court dealt with a case relating to transaction between the parties by means of a hand loan. In the present case, the liability of the accused arose through purchase of yarn from the complainant. To prove such transaction, the complainant also produced the ledger book and other documentary evidence. It is true that under Section 138 of the Negotiable Instruments Act, for the purpose of drawing a presumption as contemplated under Section 118 read with Section 138 of the said Act, the burden lies on the complainant to prove the guilt of the accused. In the present case, to substantiate the complaint, as mentioned above, the complainant has produced ledger book which has entries relating to the transaction. The accused also did not dispute the signature in the cheque by sending a reply to the statutory notice sent by the complainant. In such circumstances, it has to be held that the complainant has discharged their initial burden and it is the accused who did not disprove the complaint given by the complainant.

10. For all the above reasons, the judgment of conviction and sentence rendered by the courts below needs no interference. The Criminal Revision Case is dismissed. The trial court is directed to

take steps as are necessary to secure the presence of the accused/revision petitioner herein to undergo the remaining period of sentence.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge  
Fast Track Court No.IV  
Coimbatore at Tirupur
  2. The Judicial Magistrate No.I  
Tirupur
  3. The Chief Judicial Magistrate,  
Coimbatore.
  - 4.The Inspector of Police,  
Tiruppur, North Police, Tiruppur.
  - 5.The Public Prosecutor,  
High court, Madras.
- +1 cc to Mr.S.S.Swaminathan, Advocate,SR.27341
- +1 cc to Mr.R.Lakshmi Narasimhan, Advocate,SR.27587.

Br(co)  
krd 6/7

Cr1.R.C No. 923 of 2008

सत्यमेव जयते

WEB COPY