

BAIL SLIP

The Appellant/Accuseds were directed to be released on bail as per order of this Court dated 21.7.2008 and made in M.P.No.1 of 2008 in Crl.R.C.No.992 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 992 of 2008

1. M/s.Keycer Agro Chemicals Limited
represented by
Managing Director
K.Chandrasekar
2. K.Chandrasekar .. Petitioners
- Versus
- Thirumalai Koneri .. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment of conviction and sentence imposed in Crl.A.No.102 of 2007 on the file of the learned Additional District Sessions Judge, Fast Track Court No.II, Salem, dated 22.05.2008, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.III, Salem, in C.C.No. 293 of 2003, dated 15.06.2007.

For Petitioners : Ms. S.Usha Lakshmi
Legal Aid Counsel

For Respondent : Mr.Y.Ilanchezhian

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O R D E R

The first petitioner/first accused, viz., M/s.Keycer Agro Chemicals Limited is a Firm and the second petitioner/second accused being the Managing Director of the said Firm was convicted by the learned Judicial Magistrate No.III, Salem, in C.C. No. 293 of 2003, dated 15.06.2007, for an offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and imposed with a fine of Rs.5,000/-. Challenging the same,

the accused filed Criminal Appeal No. 102 of 2007 before the Additional District Sessions Judge, Fast Track Court No.II, Salem, which was dismissed on 22.05.2008, confirming the conviction and sentence imposed by the Trial Court. As against the same, the accused has filed the present Criminal Revision Case.

2. The case of the respondent/complainant is that for the discharge of the amount due to the complainant, the second accused issued two cheques for Rs.50,000/- and Rs.62,000/- drawn on State Bank of India, Siruthozhil Branch, Salem-7, in favour of the complainant. On presentation of the cheques, the same were returned dishonoured. The respondent/complainant issued a demand notice, for which, a reply was given by the accused with false allegations and hence, the complaint.

3. Ms.S.Ushalakshmi, learned counsel appearing for the petitioners/ accused would submit that there was no relationship between the accused as well as the complainant and the cheques were not issued for the discharge of any loan or debt. He would further add that both Courts below failed to take into consideration that the cheques were issued for carrying out the construction work of petitioner's wife's house to a third party, viz., one Ganesan, which has been misused by the said Ganesan, due to the fact that there was a dispute between the accused and the said Ganesan with regard to deficiency in service using low grade timbers in construction work. He would further point out that only at the instigation of Ganesan, the present complaint has been lodged by his friend i.e., Thirumalai Koneri and therefore, there is no amount need to be paid to the complainant as there is no legally enforceable debt payable by the petitioners/accused to the respondent/complainant.

4. To substantiate the contention that unless it is proved by the complainant that the cheques were issued for the due repayment of any loan, the very cause of action will not arise, learned counsel appearing for the petitioner has placed reliance upon the judgment of the Kerala High Court reported in 2007 CrI.L.J. 1285, V.K.Gemini vs. Chandran & another.

5. Mr.Y.Ilanchezhian, learned counsel appearing for the respondent would submit that the cheques were issued by the accused in favour of the complainant only for the discharge of legally enforceable debt and hence, both Courts below have rightly convicted the accused.

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

7. On a careful reading of the judgment of both Courts below, it is seen that the third party, viz., Ganesan was examined as D.W.2, who during examination has categorically stated that there is no

quarrel in respect of the building transaction and he has denied that the cheques, which were given to him was given to the complainant, whereas, the second accused, who was examined as D.W.3, has admitted the signature found in front and back of the cheques and he has admitted that he is the Managing Director of the Firm. The second accused/D.W.3 has further averred that in view of the dispute between the accused and Ganesan with regard to deficiency in service using low grade timbers in construction work, he has not paid the balance amount. The second accused/D.W.3 has further admitted the signature in the cheques, but, he has denied that it was not filled up by him in his handwriting. As rightly pointed out by both Courts below, the cheques were issued by the second accused on behalf of the Firm to the complainant and it has got nothing to do in respect of the construction of the house of petitioner's wife. Further more, both Courts below have rightly pointed out to the letter written by the second accused to the complainant, marked as Ex.P.7, in which, he has clearly stated that out of the total loan amount of Rs.1,00,000/-, after adjusting the sum of Rs.20,000/- already paid, there is a balance sum of Rs.80,000/-, which is due and repayable by the second accused to the complainant. Thus, it is clear that there is a loan transaction between the second accused and the complainant. Hence, the decision cited supra, viz., 2007 CrI.L.J. 1285, V.K.Gemini vs. Chandran & another is not in favour of the accused and it is in favour of the complainant, because, it is clearly proved by the complainant that the cheques were issued for the due repayment of the loan. Hence, both Courts below have rightly come to the conclusion that the first petitioner is the Firm and the second petitioner/second accused on behalf of the Firm, is liable to pay the amount and therefore, in my considered opinion, the judgment of conviction and sentence imposed by the Trial Court, confirmed by the Appellate Court, is correct. Hence, I do not find any reason to interfere with the reasoned judgment passed by the Appellate Court and the judgment of the Appellate Court, dated 22.05.2008, stands confirmed. Accordingly, this Criminal Revision Case is dismissed.

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सत्यमेव जयते

s/d-

Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Additional District Sessions Judge,
Fast Track Court No.II, Salem.

2. -do- thro' The Principal Sessions Judge,
Salem.
3. The Judicial Magistrate No.III,
Salem.
4. -do- thro' The Chief Judicial Magistrate,
Salem.

copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+ 1 cc to Mr.J.Pazhani Karthik, Advocate SR 22241

rsy(co)
prk14/5

Crl. R.C. No. 992 of 2008



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