

**BAIL SLIP**

Manoharan

: Appellant/Accused

The above said appellant/Accused was directed to be released on bail as per order of the Court dated 18.07.2011 made in M.P(MD)No.1/11 in CrI.RC(MD)No.552/2011 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.R.C.(MD)No.552 of 2011

Manoharan

.. Petitioner/Appellant/Accused

Vs.

Pandiselvi

.. Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 401 Cr.P.C., to call for the records relating to the judgment, dated 23.06.2011 made in C.A.No.52 of 2010 on the file of the Additional District Sessions Judge (FTC No.I), Madurai, confirming the conviction made in S.T.C.No.615 of 2004 on the file of the Judicial Magistrate Court No.III, Madurai and set aside the same as illegal and allow the revision.

For Petitioner : Mr.R.Gandhi

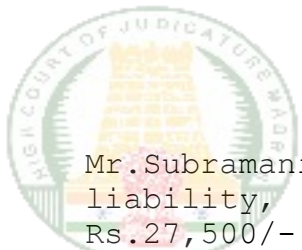
For Respondent : Mr.K.Muraleedharan

ORDER

The petitioner is the sole accused in S.T.C.No.615 of 2004 on the file of the learned Judicial Magistrate No.III, Madurai. One Mr.Subramanian was the complainant in this case. The respondent is his daughter. Mr.Subramanian filed the said case by way of private complaint before the learned Judicial Magistrate No.III, Madurai, alleging that the petitioner had committed the offence punishable under Section 138 of Negotiable Instruments Act. During trial, the complainant Subramanian died and in his place, the respondent was impleaded as the complainant. In culmination of trial, the trial Court by judgment, dated 04.06.2010 found the petitioner guilty under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and also to pay a sum of Rs.1,10,000/- as compensation as provided under Section 357(3) of Cr.P.C. Challenging the same, the petitioner filed an appeal before the Additional Sessions Judge(FTC No.I), Madurai. By judgment dated 23.06.2011, the lower appellate Court confirmed the conviction and sentence and also the compensation ordered and dismissed the appeal. Challenging the same, the petitioner is before this Court with this revision.

2. The case of the complainant is as follows:

(i) The complainant Mr.Subramanian is related to the petitioner. The petitioner was running a business under the name and style of 'Vidya Paper Industries' at Madurai. For expanding the said business, it is alleged that the petitioner borrowed a sum of Rs.1,10,000/- from



Mr.Subramanian and agreed to repay the same. In discharge of the said liability, it is alleged that he has issued four cheques each for Rs.27,500/-. All the four cheques were presented and they were all dishonoured for want of sufficient fund in the account of the petitioner. Mr.Subramanian issued legal notice as required under Section 138 of N.I. Act demanding the cheque amount under all the four cheques. Having received the said notice, the petitioner did not comply with the demand. Therefore, Mr.Subramanian, filed the private complaint.

(ii) During the course of trial before the lower Court, on the side of the complainant, three witnesses were examined including the respondent herein and as many as fourteen documents were exhibited. On the side of defence, the accused himself was examined as D.W.1. On his side, one document was marked as Ex.D1.

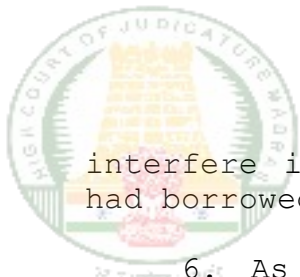
(iii) The case of the defence as spoken to by D.W.1 is that Mr.Subramanian used to visit his shop frequently and the petitioner was also in the habit of getting hand loan from him on many occasions. It was the practice to repay the said loans within few days. As a security, according to him for the above transactions, Mr.Subramanian wanted him to issue four cheques. Accordingly, he gave four cheques in question on the understanding that Mr.Subramanian would return the same as soon as the entire loan amount was repaid. But, even after the loan amount was repaid, he did not return the cheques. Therefore, he made complaint to the police also. But of no avail. Thus, according to him, there is no legally enforceable debt.

(iv) Having considered all the above materials, the trial Court rejected the case of the accused and held that the cheques were issued only in discharge of the legally enforceable debt. The trial Court thus found the petitioner guilty for the offence under Section 138 of N.I. Act and accordingly punished him. The lower appellate Court also confirmed the same. That is why, the petitioner is before this Court with this revision.

3. Today when the matter was taken up, both the petitioner as well as the respondent are present in Court. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent and also perused the records carefully.

4. The learned counsel for the petitioner would submit that there was no legally enforceable debt and that the cheques were issued only as a security.

5. In my considered opinion, there is no substance in the submission made by the learned counsel for the petitioner at all. Upon appreciating the entire facts and circumstances, the Courts below have come to the conclusion that there was legally enforceable debt and the cheques were issued only in discharge of the same. In the said factual finding, I do not find anything improper warranting interference at the hands of this Court. The learned counsel for the petitioner is not able to point out any infirmity in the finding of the trial Court and confirmed by the lower appellate Court. I do not find any reason to



interfere into the said concurrent factual finding that the petitioner had borrowed money and the cheques were issued in discharge of the same.

6. As required under Section 138 of N.I. Act legal notice was issued and admittedly the same was received by the petitioner, but he did not chose to comply with the notice. Neither he sent a reply nor he repaid the amount demanded by the complainant. Only after waiting for the expiry of the statutory period, the complaint was presented. The complainant has clearly proved that the petitioner has committed the offence under Section 138 of N.I. Act.

7. Turning to the punishment and the compensation awarded, the learned counsel for the petitioner would submit that the petitioner is prepared to pay Rs.2,20,000/- as compensation. He would further submit that in order to avoid imprisonment, he is prepared to pay the said amount and if the respondent is agreeable for any more amount, for that also the petitioner is agreeable. But the respondent, who is present in Court would say that she does not want any amount at all from the petitioner. She would state that her father died due to the depression caused due to the pendency of the case. Therefore, she is not ready and willing to receive any amount from the petitioner.

8. The learned counsel for the respondent would submit that the petitioner had dragged on the case for fifteen years very successfully. He would further point out that the records of the lower Court would reveal that the petitioner recalled the witnesses on many occasions and used all sorts of methods to drag on the proceedings for 15 years. Therefore, according to the learned counsel, the respondent is not agreeable for any compensation or settlement.

9. I have considered the above submissions. So far as the offence under Section 138 of N.I. Act is concerned, it cannot be forgotten that basically there is an element of civil dispute between the parties. While deciding the quantum of compensation, this Court cannot apply the same yardstick which the Court normally applies in other offences like the offences under Indian Penal Code etc. Here, in this case, though fifteen years have elapsed, the petitioner is now prepared to settle the entire dispute by paying even more than Rs.2,20,000/- but the respondent declines to receive the said amount.

10. The learned counsel for the respondent would submit that the respondent is very particular to see that the petitioner is imprisoned. The respondent also told in open Court that she is very particular that the petitioner should be imprisoned. This statement of the respondent shows the vengeance that she has got against the petitioner. When the petitioner is prepared to settle the issue, I do not understand as to why the respondent is so adamant and she declines to receive even a single paise and as to why she wants to send the petitioner to prison.

11. In my considered view, having regard to the totality of the circumstances, It would be appropriate for this Court, to meet the ends of justice, to direct the petitioner to pay Rs.2,20,000/- as compensation which the petitioner himself offers to pay.



12. So far as the sentence is concerned, the learned counsel for the petitioner would submit that the petitioner is aged 60 years and he has three daughters. Having regard to the same, so far as the punishment is concerned, I am inclined to reduce the same to imprisonment for seven days.

13. In the result, this revision is partly allowed in the following terms:

(i) the conviction of the petitioner under Section 138 N.I. Act, is hereby confirmed;

(ii) the sentence of imprisonment imposed by the Court below is modified to rigorous imprisonment for seven days;

(iii) the petitioner is directed to pay Rs.2,20,000/- as compensation to the respondent and in default to undergo rigorous imprisonment for one month.

14. The learned counsel for the petitioner would submit that the petitioner would deposit the entire amount before the trial Court within fifteen days from today.

15. To enable the petitioner to deposit the amount, the sentence imposed, on him by this judgment shall remain suspended till 27.04.2015, on which date, the petitioner is directed to appear before the the trial Court to undergo the sentence imposed.

Sd/-

Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Additional District Sessions Judge(FTC No.I),Madurai.
- 2.The Judicial Magistrate No.III, Madurai.
- 3.The Principal Sessions Judge,Madurai.
- 4.The Chief Judicial Magistrate,Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Gandhi,dvocate, SR.No.18484

Cr1.R.C(MD)No.552 of 2011
10.04.2015

pm

PA/16.04.2015/4P/7C (IT)