

BAIL SLIP

The Accused namely Selvaraj, S/o.Krishnasami, was directed to be released on bail as per Order of this Court dated 30.04.2015 and made in CrI.M.P.No.1 of 2015 in CrI.R.C.No.417 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

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THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.Nos.417 and 1209 of 2015

CrI.R.C.No.417 of 2015:

Selvaraj
S/o.Krishnasami ... Petitioner/Accused

Vs.

Natarajan
S/o.Arumugam ... Respondent/Complainant

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, against the judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in C.A.No.9 of 2014 on 25.03.2015 confirming the judgment of learned Judicial Magistrate II, Chidambaram, passed in S.T.C.No.2179 of 2009 on 20.01.2014.

CrI.R.C.No.1209 of 2015

A.Natarajan
S/o.Arumugam ... Petitioner/Complainant

Vs.

Selvaraj
S/o.Krishnasamy ... Respondent/Accused

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, against the Judgment dated 20.01.2014 passed in S.T.C.No.2179 of 2009 by the learned Judicial Magistrate No.2, Chidambaram, which was confirmed by II Additional District & Sessions Judge, Chidambaram vide Judgment dated 25.03.2015 in C.A.No.9 of 2014 and (i) to enhance the

sentence of imprisonment of accused from period of two months to two years (ii) to order compensation of Rs.3,00,000/- which twice amount of subject matter of cheque and (iii) to sentence accused to imprisonment in the event of failure to pay compensation amount to the revision petitioner within a time fixed by this Court.

Appearance:

Petitioner in Crl.R.C.No.417 of 2015 &
Respondent in Crl.R.C.No.1209 of 2015 : Mr.R.Subramanian

Petitioner in Crl.R.C.No.1209 of 2015 &
Respondent in Crl.R.C.No.417 of 2015 : Ms.G.S.Dhanalakshmi

COMMON ORDER

Crl.R.C.No.417 of 2015 arises two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 2 months R.I. and fine of Rs.2,000/- i/d 2 weeks S.I.

2. Crl.R.C.No.1209 of 2015 seeks enhancement of sentence of imprisonment and an order of compensation in a sum of Rs.3,00,000/-.

3. Learned counsel for accused submits that PW-1/complainant had admitted to the cheque having been issued to him only as a security. The cheque was not issued towards discharge of any debt or liability. Learned counsel took this Court to the evidence of DW-2, Assistant Manager, City Union Bank, Chidambaram Branch, to inform that the writing of the sum viz., Rs.1,00,000/- on the cheque admittedly was in black ink whereas the signature of the petitioner was in blue. Learned counsel submits that from the evidence of Assistant Manager it was clear that the account No.3368 was closed and a fresh account No.163249 was opened. Learned counsel submits that in the circumstances the accused has discharged the initial burden u/s.139 of the Negotiable Instruments Act and it was the duty of the complainant to have proved the debt which he has failed to do.

4. Learned counsel for complainant submits that the trial Court rightly had observed that though DW-2, Assistant Manager, admitted to the cheque reflecting the altered bank account number, such witness had not ruled out the possibility of the altered cheque number having been entered by the bank officials. As regards the admission of PW-1 of the cheque having been given as security, learned counsel submits that such admission is to be taken as relating to the loan in respect of which the cheque

came to be issued. Learned counsel submits that Courts below rightly had observed that the accused had made no attempt to obtain return of the cheque. Learned counsel submits that such attempt would have been made if the cheque had been issued towards security.

5. This Court has considered the rival submissions.

6. Petitioner/accused has been able to show that the signatures on the cheque and other writings are of different ink. The cheque has been issued on the account bearing No.3368 i.e., relating to the period prior to 2006. It is the respondent/complainant's case that the cheque was issued in the year 2009. The contention of petitioner/accused that the cheque issued much earlier merely towards security has been misused towards informing issue of a cheque of the year 2009 merits serious consideration. In the circumstances, this Court finds that the initial burden u/s.139 of the Negotiable Instruments Act indeed does stand discharged by petitioner/accused. If so, it is the duty of the respondent/complainant to prove the debt which he has failed to do.

In the result,

(i) CrI.R.C.No.417 of 2015 shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in C.A.No.9 of 2014 on 25.03.2015 confirming the judgment of learned Judicial Magistrate II, Chidambaram, passed in S.T.C.No.2179 of 2009 on 09.01.2014, shall stand set aside. Petitioner is acquitted of all charges. Fine amount, if any, paid by him shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

(ii) CrI.R.C.No.1209 of 2015 shall stand dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The II Additional District and Sessions Judge,
Chidambaram.

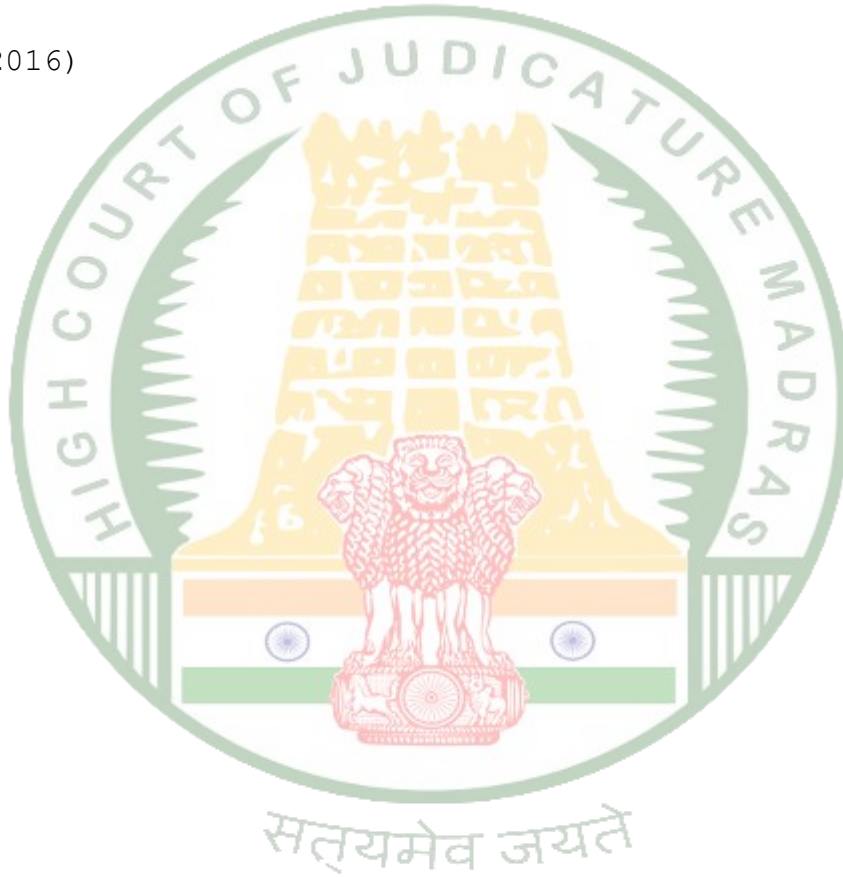
2. The Judicial Magistrate II,
Chidambaram.

3. The Chief Judicial Magistrate,
Chidambaram.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.3401

Cr1.R.C.Nos.417 and 1209 of 2015

NM(CO)
CA(09/03/2016)



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