Bail Slip
The Petitioner/Accused Xlamely V. Sadagopan, was released on bail in and by the order dt.16.11.2016 made in Crl.R.C.No.1388/2016 and Crl.MP.12190 and 12191/2016 on the file of this Hon'ble High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1388 of 2016
&
Crl.M.P.Nos.12190 and 12191 of 2016

V.Sadagopan .. Petitioner/Accused

vs.

Sri Meenakshi Sundaram Textiles
rep by its Proprietor
Mr.M.Thiyagarajan
rep by his power of attorney holder
Mr.T.Meenakshisundaram .. Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order passed by the learned I Additional District and Session Judge, Tirupur in C.A.No.87/2014 confirming the conviction and modifying the sentence passed in the judgement in STC No.3736/2008 dated 26.11.2014 by the learned Judicial Magistrate I,Tirupur.

For Petitioner : Mr.R.Baskar
For Respondent : Mr.A.C.Kumaraguruparan

सत्यमेव जयते
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O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 1 year S.I. and to pay a sum of Rs.11,39,932/- as compensation within a period of one month.

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2. Petitioner/accused had business dealings with the respondent in purchase of yarn and knitted grey fabric. The respondent has supplied the same and has raised several bills by way of delivery cum bill of exchange. As per the respondent statement, a sum of Rs.11,39,935.20 is due and payable by the accused. Towards discharge of the said amount petitioner issued three cheques bearing nos.000232,000255 and 000269 dated 10.03.2008,19.03.2008 and 29.03.2008 in sums of Rs.4,73,760/-, 5,73,292.80 and 92,880/- drawn on Kotak Mahindra Bank, Avinashi road branch, Tirupur. Respondent presented the cheques on 23.07.2008 in his account held with the Corporation Bank, Tirupur branch, and all the three cheques were returned on 24.07.2008 with endorsement "payment stopped by the drawer". Respondent issued statutory notice dated 19.08.2008 which was received by the petitioner on 24.08.2008, petitioner failed to repay the respondent and hence the respondent preferred a complaint before the trial court.

3. Before the trial Court, the respondent examined himself and marked 20 exhibits, and the petitioner examined three witnesses and marked three documents Ex.D.1 to D.3 and statement of accounts was exhibited as a document on the part of lower court as Court document Ex.No.1.

4. On examination of materials before it, the trial Court found the charge proved and convicted the petitioner for offence u/s. 138 of the Negotiable Instruments Act, and sentenced him to undergo 1 year S.I and to pay compensation of Rs.11,39,932/- within one month on 26.11.2014. There against, petitioner/accused preferred C.A.No.87 of 2014 on the file of learned Additional District and Sessions Judge, Tirupur. Under judgment dated 26.10.2016, the Appellate Court dismissed the appeal. Hence, this revision.

5. Heard the learned counsel for petitioner and the learned counsel for respondent.

6. A series of transactions between the petitioner/accused and the respondent/complainant is admitted. Petitioner has As admitted all transactions between the parties save three. 'Towards proving the veracity of such three transactions respondent has filed a petition in C.M.P.No.4698/2013 on the file of learned Judicial Magistrate I, Tiruppur contending thus :

> "2. The counsel for the accused during his cross examination of P.W.1 has disputed the invoice Nos.1949,223 and 2053 produced by the complainant as false and fabricated for the purpose of this case. The complainant was also suggested that no transaction had taken

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place on the basis of the above said invoices. Whereas the invoice No.223 is pertaining to the cloth sales which will not be covered under VAT. Regarding the other two invoices viz., invoice No.1949 & 2053, the Value Added Tax has been paid and the same has been reflected in the Invoices. The accused herein would have claimed the value added tax from the Commercial Tax Department by producing the above said invoices, which would go to show that the transactions pertaining to the above said invoices have taken place. Likewise, the complainant herein have also paid VAT for the above said Invoice Nos.1949 and 2053. The details of the VAT paid by the complainant should also be brought for the purpose of proving the transactions. For this purpose, the Commercial Tax Officer, need to be summoned for producing details of purchase/transfer value (Annexure-1) for the month of February and March 2008 pertaining to V.Sadagopan, Proprietor of Shivanand Tex, TIN No.33762305315 and purchase/transfer value (Annexure-2) for the month of February and March 2008 pertaining to Sri.M.Thiagarajan, Proprietor of Sree Meenakshi Sundaram Textiles, TIN No.33492400281. Unless, the complainant's side evidence is re-opened for examination of further witness, he will be put to irreparable loss and hardship."

On the above contention he has sought reopening of the complainant's side evidence for examination of further witnesses. The Trial Court under orders dated 26.12.2013 has been pleased to allow such application.

7. Learned counsel for the respondent submits that the respondent did pay necessary batta towards calling the official witnesses/ Commercial Tax officer but such official has not appeared before the trial court.

8. When once the Court below has thought it appropriate to examine official witness, the necessary inference is that the complainant has been required to prove his debt. Therefore, the Trial Court is in error having proceeded further without examination of the official witness, application where for it has allowed. For the aforesaid reason, this revision shall stand allowed. Connected miscellaneous petitions are closed. The judgment of learned I Additional District and Session Judge, Tiruppur, passed in C.A.No.87 of 2014 on 26.10.2016 and that of

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learned Judicial Magistrate No.I, Tirupur passed in S.T.C.No.3736 of 2008 on 26.11.2014, shall stand set aside. The matter shall now stand remitted back to the learned Judicial Magistrate I, Tiruppur towards examination of the witnesses in keeping with its order in C.M.P.No. 4698 of 2013 dated 26.12.2013. Thereafter, the Trial Court may proceed to hear arguments afresh and pass judgment in accordance with law. Any attempt in protraction of proceedings by either party may be viewed seriously. Towards effectual and early disposal of the case before the Trial Court, respondent/complainant is required to take out summons afresh towards the presence of the official witness/commercial tax officer before Court below on or before 17.02.2017. Court below shall deal with the case expeditiously, hear arguments afresh peruse the records and pass judgment within a period of one month thereafter.

In the circumstances of this case, it would be appropriate that the Court below does not accept any further application for further examination of witnesses. Petitioner shall also be upon duty to complete the cross examination of official witness on the very day on which he is examined in chief.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The I Additional District and Session Judge, Tirupur
2.The Judicial Magistrate I,Tirupur.
3 The Chief Judicial Magistrate,
Tirupur (for information)
4 The Section Officer
Criminal Section, High Court, Madras

+2cc to Mr.V. Vijayakumar, Advocate, S.R.No.73202
+1cc to Mr.A.C. Kumaragurubaren, Advocate, S.R.No.73592

ak(CO)
md(07/02/2017)

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