

Bail slip

The Petitioner/Accused was enclosed on bail in and by the order dated 29.02.2016 made in CrI.MP.No.2304 of 2016 in CrI.R.C.No.341/2016 on the file of the High Court Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07-09-2016

(Orders reserved on 20.07.2016)

Coram

THE HONOURABLE MR. JUSTICE G. CHOCKALINGAM

CrI.R.C.No.341 of 2016

S.Muralikrishnan ...Accused/Appellant/Petitioner

Vs.

G.Muniraj ... Respondent/Respondent/Complainant

Prayer :- Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., against the Judgment of the learned II Additional District and Sessions Judge, Erode in C.A.No. 66 of 2015 dated 17.12.2015 confirming the conviction and sentence passed by the learned Judicial Magistrate No.2 (Fast Track Court), Erode in S.T.C.No. 463 of 2012 dated 17.06.2015.

For Petitioner : Mr.J.Franklin

For Respondent : Mr. R.Marudhachalamurthy

ORDER

The Criminal Revision Case is directed against the judgment of the learned II Additional District and Sessions Judge, Erode, in C.A.No. 66 of 2015 dated 17.12.2015 confirming the conviction and sentence passed by the learned Judicial Magistrate No.2 (Fast Track Court), Erode in S.T.C.No. 463 of 2012 dated 17.06.2015.

2. The facts leading to this revision are as follows:-

The revision petitioner is the accused and he has borrowed a sum of Rs.5,00,000/- from the respondent/complainant and issued a cheque bearing No. 002347 dated 09.12.2011 for Rs.5,00,000/- in favour of the complaint and when the cheque was presented for collection, the same was returned as 'insufficient funds' on the account of the accused. Hence, the complainant has issued a

notice to the accused and the notice was received by the accused, but he has not complied with the notice. Hence, a complaint was lodged under Section 138 of the Negotiable Instrument Act by the complainant before the trial Court. The Trial Court, after considering the entire evidence adduced on either side and perused the documents, found the petitioner/accused guilty and sentenced him to undergo one year rigorous imprisonment and one year simple imprisonment also and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment on 17.06.2015. Against the above Judgment, the accused/revision petitioner preferred an appeal before the learned II Additional District and Sessions Court, Erode and it was numbered as C.A.No. 66 of 2015. The learned II Additional Judge, after analysing the entire evidence, confirmed the conviction and sentence passed by the trial Court. Against which, the revision petitioner has preferred the present revision before this Court.

3. The learned counsel for the revision petitioner mainly contended that the complainant in this case has not proved the case beyond reasonable doubt. He further submits that the complaint is not proved. The cheque amount was already paid to the complainant and the complainant has failed to return the cheque. Afterwards, he filed the false complaint against the accused. PW-1 has not come forward with the clean hands. Further, he admitted that he had filed number of cases under Section 138 of the Negotiable Instrument Act against several persons. Hence, the case of the complainant was not proved in this case beyond all reasonable doubt. The trial Court and the First Appellate Court ought to have acquitted the accused. Since the Court below passed an erroneous Judgment, the learned counsel prays for allowing of the Criminal Revision Case by setting aside the order of the Court below.

4. The learned counsel for the respondent/complainant mainly contended that the Courts below after appreciating the entire evidence adduced and documents marked on either side, came to a correct conclusion and passed Judgment and there is no illegality or infirmity in the orders passed by the Courts below. Hence the orders of the Courts below have to be confirmed and the revision has to be dismissed.

5. The main argument put-forth on the side of the petitioner is that the complainant has not proved the case beyond all reasonable doubt and also, the petitioner has no source of income and the amount lending to the revision petitioner is not stated in the income tax account. The cheque was given only as a security to the business purposes. Hence, the case of the petitioner has to be accepted and the accused

has to be acquitted. It is admitted on the side of the revision petitioner that he signed the cheque. He said that the blank cheque was issued to the complainant for security purposes. Further he contended that he paid the entire amount, but the complainant failed to return the cheque. To prove the above facts, the revision petitioner has not issued any notice to the complainant to return the cheque.

6. In view of the above circumstances, the arguments of the learned counsel for the petitioner that the cheque was issued only for security purpose, and he paid the loan amount, but the respondent has refused to return the cheque are not believable. Since signature in the cheque issued was admitted on the side of the petitioner, it is the duty of the petitioner to prove why blank cheque was issued and even though paid the amount and why he has not taken any action to get return of the cheque. The petitioner even though during the revisional stage has stated that he has no source of income. But in this case PW-1 specifically stated in his evidence that he was doing business under the name and style of "Abirami Teks" for the last 15 years. In view of this argument of the petitioner that the respondent has no source of income to give the amount to the revision petitioner /accused, is not believable. Further the learned counsel for the petitioner contended that the above transaction was not reflected in the Income Tax Account of the complainant. Hence, the case of the revision petitioner has to be believed. It is proved on the side of the complainant that the cheque was issued by the revision petitioner to the complainant and the cheque was dishonoured also clearly proved. The above argument cannot be countenanced to disprove the claim of the complainant.

7. In view of the above circumstances, this Court finds that the Court below after analysing the entire evidence and materials came to a proper conclusion. This Court finds no illegality or infirmity in the order passed by the learned II Additional District and Sessions Judge, Erode and the same does not warrant any interference by this Court.

8. In the result, the Criminal Revision Case stands dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1 The II Additional District and Sessions Court,
Erode

2 The Judicial Magistrate (No.2 (Fast Track Court) Erode

3 The Chief Judicial Magistrate,
Erode (for information)

4 The Public Prosecutor
High Court, Madras

5 Copy to:

The Section Officer,
Criminal Section
High Court, Madras

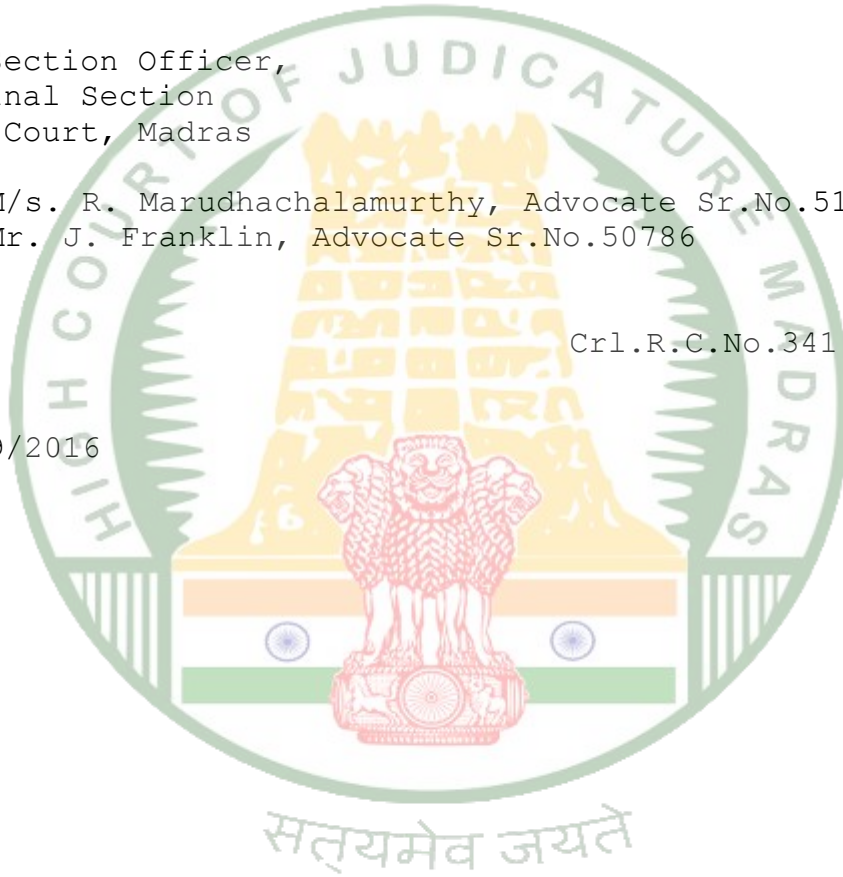
+1 CC to M/s. R. Marudhachalamurthy, Advocate Sr.No.51259

+1 CC to Mr. J. Franklin, Advocate Sr.No.50786

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AK (CO)

MD : 05/09/2016



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