BAIL SLIP

The Appellant/Petitioner/Accused namely B.Babu was directed to be released on bail as per the order of this Court dated 06.02.2014 in Crl.Mp.No.1 of 2014 in Crl.R.C.No.155 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. R.C.No.155 of 2014
and
Crl.M.P.No.2 of 2014

B.Babu ... Petitioner/Accused

//vs//

S.Ilayaraja ... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure to call for the records on the file of the Learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District in Crl.A.No.258 of 2011 dated 24.10.2013 against the judgment and sentence passed in C.C.No.12 of 2010 on the file of the Learned Judicial Magistrate, Sholingur, Vellore District dated 12.11.2011 and set aside the Judgment dated 24.10.2013.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.K.G.Senthil Kumar



ORDER

The petitioner is the sole accused in C.C.No.12 of 2010 on the file of the Judicial Magistrate, Sholinghur. He stood charged for an offence under Section 138 r/w 142 of Negotiable Instruments Act and Section 357(iii) of Cr.P.C. The trial Court, by judgment dated 12.11.2011, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for 6 months and to pay the cheque amount of Rs.1,00,000/- as compensation to the respondent/complainant. Challenging the conviction and sentence, the petitioner had preferred an appeal in Crl.A.No.258 of 2011 on the file of the II Additional District and Sessions Court, Vellore at Ranipet, Vellore District. The lower appellate court confirmed the conviction and sentence and dismissed the appeal, by judgment dated 24.10.2013. Challenging the same, the present revision has been filed by the accused.

2. The case of the complainant, in brief, is as follows:-

The petitioner herein had borrowed a sum of Rs.1,00,000/- from the respondent/complainant on 10.11.2009. To discharge the above liability, the petitioner had issued a cheque dated 19.11.2009 for Rs.1,00,000/- drawn on Indian Overseas Bank, Sholinghur and when the cheque was presented for collection, the same was returned as "insufficient funds". Thereafter, the respondent/ complainant issued a legal notice, but, the petitioner did not send any reply and did not discharge the liability. Hence, he filed a private complaint.

3. Considering the complaint as well as other materials, the trial Court framed charge under Section 138 of Negotiable Instruments Act and the accused denied the same. In order to prove his case, the respondent/complainant examined himself as P.W.1 and deposed that the petitioner borrowed Rs.1,00,000/- as hand loan and in order to repay the same, he issued a cheque dated 19.11.2009. When the said cheque was presented, the same was returned on the ground of "insufficient funds" and after completing legal formalities, he filed a complaint. To support his case, he has also produced the cheque issued by the petitioner, return memo issued by the bank and legal notice issued by the respondent and acknowledgment.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same. The petitioner/accused examined himself as D.W.1 and contended that he has only borrowed a sum of Rs.20,000/- from the respondent and he has repaid the entire amount to the respondent and only a sum of Rs.7000/- is due towards interest. At the time of borrowing the said amount, the petitioner has given a blank cheque and misusing the same, the present complaint has been given by the respondent and he further deposed that when he received legal notice from the respondent, he approached the respondent and the respondent informed him that only for threatening the petitioner, the respondent issued notice to him and the respondent also assured him that no further action will be taken and hence, the petitioner did not give any reply to the said legal notice.

5. In the cross examination, the petitioner has stated that for the sum of Rs.20,000/-, he has paid the interest at the rate of Rs.1200/- per month for 3 years and he has also discharged the entire principal amount and only an extent of Rs.7000/- is due towards interest due to him. Now, using the cheque given at the time of borrowal of Rs.20,000/-, the present complaint has been filed.

6. Considering the oral and documentary evidence, the trial Court convicted and sentenced the petitioner/accused as mentioned in paragraph No.1 of this order. Challenging the above said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.258 of 2011 and the lower appellate Court confirmed the conviction and sentence and dismissed the appeal by a judgment dated 24.10.2013. Challenging the same, this Criminal Revision is filed by the petitioner/accused.

7. Heard Mr.E.Kannadasan, learned counsel appearing for the petitioner and Mr.K.G.Senthill Kumar, learned counsel appearing for the respondent and perused the materials available on records carefully.

8. It is submitted by the learned counsel for the petitioner that pending revision, now the petitioner has also paid a sum of Rs.60,000/- to the respondent and the learned counsel for the respondent also submits that the complainant had received the said sum.

9. In the instant case, since the petitioner had admitted the issuance of cheque, hence the presumption under Section 139 of Negotiable Instruments Act comes into play and the initial burden is on the petitioner to show that the cheque was not issued to discharge the legally enforceable debt or liability. But it is a rebuttable presumption and the petitioner/ accused can rebut the presumption by raising probable defence, which create a doubt regarding the liability. Now, the petitioner/accused, who examined himself as DW1, has raised a defence that the petitioner has only borrowed a sum of Rs.20,000/- from the respondent 3 years ago and he has also repaid the said sum with interest at the rate of Rs.1200/- per month for nearly 3 years and he has also repaid the entire principal amount and the interest amounting to Rs.7000/- alone is due to the respondent and by using the cheque issued by the petitioner earlier, the complaint has been filed.

10. I am satisfied that the petitioner has raised a probable defence, which creates a doubt regarding the liability and he has raised the initial burden on his head. Now, the burden shifts on the respondent to show that there is a legally enforceable debt or liability. Except the evidence of P.W.1,

there is absolutely no other material available to show that the petitioner has advanced a sum of Rs.1,00,000/- and for discharging the same, the present cheque has been given.

11. In the above circumstances, the respondent/ complainant failed to prove that there is a legally enforceable debt or liability against the petitioner/accused. Hence, the respondent failed to prove the charge under Section 138 of Negotiable Instruments Act and in such circumstances, the petitioner is entitled for acquittal. The lower Courts, without considering the evidence in proper perspective, convicted the petitioner/accused and hence, it is liable to be interfered with.

12. In the result, the Criminal Revision Case is allowed and the order of the courts below are set aside. The petitioner is acquitted of the charge. The bail bond, if any, executed by him shall stand cancelled. If the compensation amount is paid by the petitioner, the same shall be refunded to him. Consequently, connection Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The II Additional District and Sessions Court,
   Vellore at Ranipet, Vellore

2. The Judicial Magistrate Court,
   Sholingur, Vellore District.

3. The Chief Judicial Magistrate Vellore

+1cc to Mr.K.G.Senthil Kumar, Advocate, S.R.No.43241
+1cc to Mr.E.Kannadasan, Advocate, S.R.No.43363

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and
Crl.M.P.No.2 of 2014

SR(CO)
CS/10/07/17