

Bail Slip

The accused/Petitioner herein viz, S.Ganesan, was directed to be enlarged on bail as per the order of this court in CRL.R.C.1266/2016 of CRL.M.P.11368 of 11460/2016 dated 26/10/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

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

Crl.R.C.No.1266 of 2016
and
Crl.M.P.Nos.11368 and 11460 of 2016

S.Ganesan
S/o.Selvaraj .. Petitioner/Accused

vs.

R.Kalaiarasi
W/o.K.Radhakrishnan ... Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned I Additional Sessions Judge, Erode, passed in C.A.No.25 of 2015 on 22.09.2016 confirming the judgment of learned Judicial Magistrate II, Erode, passed in C.C.No.657 of 2007 on 16.03.2015.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.A.Thiyagarajan

O R D E R

This Court has reserved orders in this revision on 31.01.2017. Thereafter, the matter was listed on two occasions. Today, the matter is listed under the caption 'for orders'. When the matter is taken up, it is represented that the petitioner/accused has not effected payment as agreed. Hence, this Court proceeds to pass orders on merits.

2. 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 fine of Rs.2,000/- i/d 1 month S.I.

3. Respondent moved a prosecution informing that the petitioner borrowed a sum of Rs.3,60,000/- from the complainant and a cheque bearing No.299441 dated 10.06.2007 drawn on Canara Bank, Arachalur Branch, stood issued to him by petitioner towards repayment of borrowing, which upon presentation was returned unpaid for the reason "insufficient funds". Respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

4. Before the trial Court, respondent examined herself and marked six exhibits. Four witnesses were examined on behalf of the defence and three exhibits were marked.

5. On appreciation of materials before it, trial Court, under judgment dated 16.03.2015 in C.C.No.657 of 2007, convicted petitioner and sentenced him to 1 year S.I. and fine of Rs.2,000/- i.d 1 month S.I. There against, petitioner preferred C.A.No.25 of 2015 on the file of learned I Additional Sessions Judge, Erode. Appellate Court, under judgment dated 22.09.2016, dismissed the appeal. There against, the present revision has been filed.

6. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials on record.

7. In convicting the petitioner, Courts below have found as follows:

- (i) The contention of petitioner/accused that there was material alteration in Ex.P1, cheque, i.e., the figure '0' has been altered as '6' has been rejected by Courts below on the reasoning that there was no such material alteration found in the cheque.
- (ii) Though it was the contention of petitioner/accused that he has misplaced his four cheques bearing Nos.299441, 299442, 299445 and 299446 and cash of Rs.26,000/- while he was travelling in a bus and that he has also preferred a complaint before the Arachalur Police Station on 14.10.2007, neither the copy of the complaint nor the copy of CSR has been marked. Further, petitioner/accused has not even examined the concerned police authorities to substantiate his case. Hence, such contention was rejected.
- (iii) One other contention of petitioner/accused that he lost his cheques and hence, he had given 'stop payment' instructions to the Bank has been negated on the reasoning that even assuming that the contention was true, Ex.P1, cheque, has not been returned for the reason 'stop payment' but for the reason 'insufficient funds'.

(iv)Once the signature in the cheque has not been denied, then it is the duty of petitioner/accused to rebut the presumption u/s.139 of the Negotiable Instruments Act, which he has failed to do.

In the circumstances above stated, this Court would concur with the findings of Courts below as the petitioner has failed to rebut the initial presumption which arises against him under Section 139 of the Negotiable Instruments Act.

The Criminal Revision Case shall stand dismissed. Connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

gm

To

1. The I Additional Sessions Judge,
Erode.
2. The Judicial Magistrate II,
Erode.

+1cc to M/s.A.Thiyagarajan, Advocate in sr.no.43034

Crl.R.C.No.1266 of 2016 &
CRL.M.P.11368 & 11460/2016

RR(CO)
NR 14/07/2017

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