

Bail Slip

The Petition/Accused in both Revision Petitions, viz., A.R. Adhikesavalu, S/o Ramulu Naidu was directed to be released on bail as per order dated 22.12.2016 passed in Crl.M.P.Nos.13838 to 13841 of 2016 in Crl.R.C.No.1673 & 1674/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.Nos.1673 & 1674 of 2016
and Crl.M.P.Nos.13838 to 13841 of 2016

A.R.Adhikesavalu ... Petitioner in both Crl.RCs.

Vs.

M/s.Sri Vignesh Auto Financiers
Rep.by its Managing Partner,
K.C.MANNAR NAIDU
No.18, 1st Floor,
D-Mundy Street, Vellore 632 004.

.. Respondent in Crl.RC.No.1673 of 2016

M/s.Sri Vignesh Syndicate, Vellore
Rep.by its Managing Partner,
M.Dilli,
No.18, 1st Floor, D-Mundy Street,
Vellore 632 004.

.. Respondent in Crl.RC.No.1674 of 2016

Criminal Revisions filed under Sections 397 and 401 Cr.P.C. against the judgment of learned I Additional District Judge, (Fast Track Court), Vellore, Vellore District passed in Crl.A.Nos.76 & 77 of 2012 dated 25.11.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court (Magisterial Level) Vellore, Vellore District, passed in C.C.Nos.4 of 2012 & 674 of 2011 dated 28.03.2012.

For Petitioner : Mr.E.Kannadasan
For Respondent : Mr.M.Praveen Kumar

COMMON O R D E R

i)Crl.RC.No.1673 of 2016 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 one year S.I. and fine of Rs.3,000/- i/d one month S.I.

ii) Crl.R.C.No.1674 of 2016 arises against the two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to one year S.I. and fine of Rs.5,000/- i/d one month S.I.

2. Respondent/complainant viz., M/s.Sri Vignesh Auto Financiers rep.by its Managing Partner K.C.Mannar Naidu in Crl.R.C.No.1673 of 2016 moved a prosecution informing that petitioner/accused borrowed a sum of Rs.5.50,000/- with interest and towards repayment thereof, cheque bearing No.762862 dated 19.01.2009 drawn on Canara Bank, Sengundram, S.Mottoor Branch stood issued to him, and respondent/complainant viz., Sri Vignesh Syndicate, Vellore rep.by its Managing Partner, M.Dilli in Crl.R.C.No.1674 of 2016 moved a prosecution informing that petitioner/accused borrowed a sum of Rs.1,00,000/- on 27.04.2007 and towards repayment thereof, cheque bearing No.762861 dated 19.01.2009 for Rs.4,00,000/- which upon presentation was returned unpaid for the reason "insufficient funds". Respondent/ caused notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, both complaints had been filed.

3. Before the trial Court, respondent/complainant and other witnesses in C.C.No.4 of 2012 examined as P.W1 to P.W.3 and marked thirty six exhibits. Petitioner/accused examined himself, and one exhibit was marked. Respondent/complainant and other witnesses in C.C.No.674 of 2011 examined as P.W.1 to P.W.3 and marked thirty three exhibits. Petitioner/accused examined himself and one exhibit was marked.

4. On appreciation of materials before it, the trial Court, under judgment dated 28.03.2012 in C.C.No.4 of 2012 convicted the petitioner and sentenced him to one year S.I. and fine of Rs.3,000/- i/d 3 months S.I and in C.C.No.674 of 2011 convicted the petitioner and sentenced him to one year S.I and fine of Rs.5,000/- i/e one month S.I. There against, petitioner preferred C.A.Nos.76 & 77 of 2012 on the file of learned Additional District Judge (Fast Track Court), Vellore District,

which came to be dismissed under judgment dated 25.11.2016. Hence, these revisions.

5. Heard learned counsel for both sides.

6. Mr.E.Kannadasan, learned counsel for petitioner, would contend that the statutory notice dated 02.04.2009 has been received by respondents on 06.04.2009. Learned counsel contended that though cheque No.762862 had been issued in favour of Sri Vignesh Auto Financiers, the statutory notice of demand was made on behalf of Sri Vignesh Syndicate. Learned counsel contended that no prosecution could have been launched on such erroneous notice. We find that Courts below have taken note of the position that a rejoinder has been caused to the reply notice of the petitioner explaining the apparent error in as much as petitioner had caused a reply in respect of cheque bearing No.762862. Courts below found that on the correct position being informed by respondent petitioner has raised no dispute through any further communication. Thus the findings of Courts below that the statutory notice is in order. The next contention of the learned counsel for petitioner in respect of prosecution launched by M/s.Sri Vignesh Syndicate, Vellore in C.C.No.674 of 2011 that the petitioner had filed an insolvency petition in I.P.No.1 Of 2009 on the file of learned Subordinate Judge, Vellore and therein petitioner had shown M/s. Sri Vignesh Syndicate, Vellore as creditor. Learned counsel for respondent submitted that notice in such insolvency proceedings was received by respondent on 01.04.2009 by which date, the complaint had been filed.

7. In circumstances where learned counsel for petitioner is unable to affirm that an order of adjudication has been made in the insolvency proceedings, this Court is unable to appreciate his contention. Petitioner has failed to rebut the initial presumption against him.

Courts below rightly have entered upon findings on conviction. This Court find no reason to interfere. These Criminal Revisions are dismissed. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to secure the custody of the petitioner/Accused and send him to the Prison to undergo remaining period of sentence.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kkd

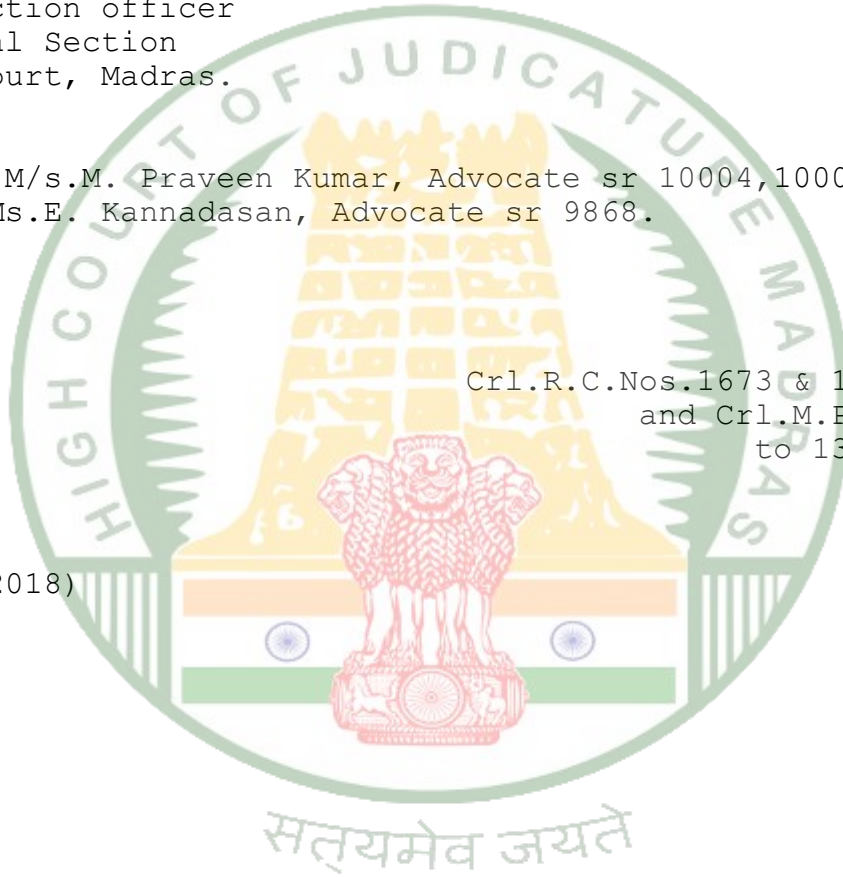
To

1. I Additional District Judge, (Fast Track Court),
Vellore, Vellore District.
2. The Judicial Magistrate, Fast Track Court (Magisterial Level)
Vellore, Vellore District.
3. Do Thro The Chief Judicial Magistrate
Vellore.
4. The Section officer
Criminal Section
High Court, Madras.

+2 Ccs to M/s.M. Praveen Kumar, Advocate sr 10004,10005.
+1 CC to Ms.E. Kannadasan, Advocate sr 9868.

Crl.R.C.Nos.1673 & 1674 of 2016
and Crl.M.P.Nos.13838
to 13841 of 2016

KAN (CO)
SP (14/02/2018)



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