

Bail Slip

The Accused viz., V.Kesavan, was released on bail in Crl M.P.No.1 of 2014 in Crl.RC.No.146/2014 dated 5/2/2014 on this file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.07.2018

Pronounced on : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.146 of 2014

V. Kesavan

Rep. by Proprietor/Authorised Signatory Jasmine Yarns,
ACE City Garden,
College Road, Anaipudur,
Kallampalayam,
Tiruppur - 641 605.

... Petitioner /Accused

Vs.

M/s. J.P.R. Exports

Represented by its Power of Attorney Holder
Ilandirayan

No.635/2, Chandrapuram, KNP Colony Post,
Dharapuram Road,
Tiruppur

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Sections 397 & 401 of Criminal Procedure Code against the order passed in CA.No.42 of 2013 dated 31.10.2013 by the learned Principal Sessions Judge, Tiruppur against the S.T.C. No.5304 of 2010 on the file of Judicial Magistrate No.I, Tiruppur.

For Petitioner : Mr. D. Muthukumar

For Respondent : Mr. C.R. Prasanan

ORDER

Accused is the revision petitioner.

2. The respondent herein/private complainant has filed S.T.C. No.5304 of 2010 before the learned Judicial Magistrate No.1, Tiruppur, for alleged offence under Section 138 of Negotiable Instrumental Act and after trial, it is ended in conviction. On appeal filed by the accused, C.A.No.42 of 2013 was dismissed by the learned Principal Sessions Judge, Tiruppur and hence, the revision by the accused.

3. The case of the complainant is that he has filed the above said private complaint stating that the accused had business transactions with them that an amount of Rs.4,60,388/- remain unpaid being the cost of the yarn for 2895.520 Kgs, that on 10.05.2010 the accused admitted his liability for the amount and executed an acknowledgment of liability, that the accused had issued a cheque dated 14.08.2010 that when the said cheque was presented for payment, it was dishonored for the reason "stop payment" that even after notice of demand, the accused has not paid the amount and that thereby, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

4. As stated supra, after observing the formalities, the learned Judicial Magistrate No.1, Tiruppur, considered the material on record and held that the stop payment also amount to insufficient funds and also attract the offence under Section 138 of Negotiable Instrumental Act and also held that despite several opportunity was given to the accused, he has not chosen for further cross examination and hence, closed the evidence of the private complainant and after questioning under Section 313 Cr.P.C., laid the conviction and the same has been confirmed on appeal.

5. Learned Counsel appearing for the revision petitioner/accused would contend that the private complainant is an unregistered partnership firm and hence, for want of mandatory sanction under Section 69(2) of the Partnership Act, they cannot maintain the complaint under Section 200 of Cr.P.C. Secondly, the private complaint has been lodged through a Power Agent and in the absence of any specific averment in the complaint regarding knowledge of the complainant with regard to the transaction by the Power of Attorney holder, his evidence cannot be looked in to, as P.W.1 is not a competent person to give evidence and the finding given by the both the Courts below regarding the second cheque said to have been given by the accused to the private complainant is erroneous in law and hence, prayed for setting aside the conviction.

6. Mr.C.R.Prasanan, learned Counsel appearing for the respondent / private complainant contended that the complaint filed by the private complainant, though an unregistered partnership is maintainable in law and there is a specific averment in the complaint satisfying the requirement of law and

the cross examination of P.W.1 establishes his case and prayed for dismissal.

7. Heard both sides and perused the records.

8. The point for determination in the Criminal Revision is that whether the order of conviction and sentence passed by the Trial Court is sustainable in law?

9. The respondent herein has come forward with a specific case that in view of the business transaction between the parties, an amount of Rs.4,60,388/- was remain unpaid representing the cost of 2895.520 Kgs. of yarn and the accused has admitted his liability and issued the cheque. But the same was dishonored for the reason "stop payment" and despite the legal notice, he has not paid the amount. So is the contention of P.W.1.

10. The question of maintainability of the complaint under Section 138 of the Negotiable Instruments Act by unregistered partnership firm is no longer res-integra, in view of the decision reported in 2012 (3) MWN (Cr.) (DCC) 49 (Mad.) [Karthick & Co., Vs. Vadivel Sizing & Weaving Mills Private Ltd.,], wherein, it is held as follows:-

Complaint filed by unregistered Partnership Firm - Held, maintainable - Bar under Section 69(2) of Partnership Act not applicable.

11. On perusal of the proof affidavit filed by P.W.1, this Court is satisfied that there are necessary averments in the affidavit with regard to the knowledge of the Power of Attorney Holder representing the respondent/private complainant. Accordingly, I have no hesitation to hold that the statutory requirement of the affidavit relating to personal knowledge of the Power of Attorney is fully complied with.

12. It appears from the cross examination of the P.W.1 that the revision petitioner has not denied the execution of Ex.P-3 acknowledgment deed. When that being the case, the Revision Petitioner/accused has admitted the cheque and also admitted the liability for the cheque amount. It remains to be stated that in the cross examination of the P.W.1, he has categorically stated and explained that the accused had initially gave 2 cheques at the time of execution of Ex.P-3 acknowledgment deed. Thereafter, he has withdrawn one cheque and with respect to the balance of cheque namely, cheque having number 518554 when presented was dishonored and there is nothing in the cross examination discrediting the evidensory value of Ex.P-3. Further more, he has admitted the signature in the cheque by not disputing the

same in the cross examination of P.W.1 also assumes significance.

13. From the evidence of the prosecution witness P.W.1 and the documents Ex.P.1 to P.13, it is seen that private complainant has successfully demonstrated regarding the business transaction between the parties and revision petitioner has liability of Rs.4,60,388/- which has been admitted under Ex.P.3 since the said document remained unchanged and the cheque in issue was also representing legally enforceable debt and the cheque was dishonored with an endorsement "stop Payment" and even after statutory notice demanding the payment, he has not paid the amount and hence, on the above factual background, the conviction and sentence passed by the Courts bellow cannot be interfered with as they does not suffer from any irregularity or illegality warranting interference by this Court.

14. In the result, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Tiruppur.
2. The Judicial Magistrate No.I, Tiruppur.
3. The Chief Judicial Magistrate,
Tiruppur District (For information)
4. The Public Prospection, High Court, Madras.
5. The Public Prosecution, Tiruppur

+1cc to Mr.C.R.Prasanan, Advocate SR.No.61956

+1cc to Mr.D.Muthukumar, Advocate SR.No.61851

GMY (09/10/2018)

CrI.R.C.No.146 of 2014