

BAIL SLIP

The Appellant namely R.Ponmudi S/o.Late Rajamanickam accused in STC.No. 89/07 on the file of the Judicial Magistrate No.3, Salem on 12.10.2010 was directed to be released on bail as per order of this court dated 05/09/2011 made in MP.No. 1/2011 in CrI.RC.No. 1200/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2018

PRONOUNCED ON : 30.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1200 of 2011

R.Ponmudi ... Petitioner / Appellant / Accused

-vs-

S.Sirajudeen ... Respondent / Respondent / Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the judgment dated 26.07.2011, passed in C.A.No.164 of 2010, on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Salem, confirming the order of conviction and modifying the sentence dated 12.10.2010 passed in S.T.C.No.89 of 2007, on the file of the Judicial Magistrate Court No.3, Salem and set aside the same by allowing the present Criminal Revision Petition.

For Petitioner : Mr.P.Sreenivasulu

For Respondent : Mr.R.Nalliyappan

ORDER

The convicted accused is the revision petitioner herein. He has filed this Criminal Revision Case to set aside the judgment dated 26.07.2011, passed in C.A.No.164 of 2010, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Salem, confirming the order of conviction dated 12.10.2010, passed in S.T.C.No.89 of 2007 on the file of the learned Judicial Magistrate No.3, Salem, for the offence under Section 138 of the Negotiable Instruments Act, 1881.

2.The respondent has filed charge sheet against the accused, alleging that the accused had borrowed a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as advance to lease his building to the complainant to run Chips Shop. The complainant compelled the accused to give receipt for the advance. For that the accused executed a promissory note. Since the building belonged to Sugavaneswara Temple, the temple authorities vacated the complainant from the building. Therefore, the complainant asked the accused to return the advance of Rs.50,000/-. After the panchayat, the accused paid Rs.10,000/- (Rupees Ten Thousand Only) and also gave a cheque for Rs.40,000/- (Rupees Forty Thousand Only), dated 15.02.2006. When the cheque was presented for encashment, the same was returned with an endorsement as "funds insufficiency" in the account of the accused. The complainant has issued a mandatory notice. The accused evaded to receive the notice and also failed to pay the cheque amount. Therefore, he committed an offence under Section 138 of the Negotiable Instruments Act, 1881.

3.To substantiate the charges, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.6. On behalf of the accused, he examined himself as D.W.1 and marked Exs.D.1 to D.6 and also the Court documents are marked as Exs.C.1 and C.2.

4.Based upon the oral and documentary evidence, the trial Court has convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.1000/- (Rupees One Thousand Only) in default, to undergo simple imprisonment for one month.

5.On appeal, the learned Additional District and Sessions Judge, Fast Track Court No.II, Salem, has confirmed the conviction and sentence given by the trial Court. Hence, the accused has approached this Court by way of filing this Criminal Revision Case.

6.The learned counsel appearing for the revision petitioner contended that the mandatory provision of Section 138 (b) of Negotiable Instruments Act, regarding the issuance of legal notice and service thereon has not been complied with and the Postman was not examined to support the case of the alleged service of legal notice and the cheque issued to the cousin brother on the maternal side has been misused to freeze the cheque and hence, prayed for setting aside the conviction and sentence passed by both the Courts below.

7.Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent and perused the materials available on record carefully.

8.Points for determination are whether the orders of conviction passed by the Courts below under Section 138 of Negotiable Instruments Act are sustainable in law? and whether the sentence passed by the Courts below is excessive?

9.It is seen from the judgment of both the Courts below that the signature in Ex.P.2 was not disputed by the accused and the cheque also belongs to the accused. The only point that has been raised before the Courts below is there is no legal notice as contemplated under Section 138(b) of the Negotiable Instruments Act. On perusal of Ex.P.4, the legal notice issued under Ex.P.3 has been returned with an endorsement "addressee left".

10.In order to probablise his plea, the accused entered into the witness box and examined himself as D.W.1 and marked Exs.D.2 to D.6 i.e., Voters Identity Card, Ration Card, Bank Pass Book, Gas connection consumer Card. As per Ex.C1 and C.2, Court records, the Court summon in this case was duly served on the accused to his business address, which has been extracted by both the Courts below.

11.On re-appreciation of the address between Ex.P.5 and Ex.C2, both the Courts below have come to the conclusion that the accused is doing Real Estate business in the name and style of S.R.N. Real Estate. The legal notice issued to his business premise was returned as 'addressee left'. There is no contra evidence to show that the accused had not run S.R.N.Real Estate at D.No.14, Andal Street, Salem-1, as found in Ex.P.5 and it appears that both the Courts below have invoked the presumption under Section 27 of General Clauses Act coupled with presumption under Section 114(F) of Indian Evidence Act and accordingly, held that the notice is deemed to have been served on the accused before institution of the private complaint in this case.

12.Based upon the evidence of Ex.P.5 and Ex.C.2 and presumption in favour of the private complainant as found in the above said provisions, both the Courts below have rightly discussed the point in detail and in proper perspective have held that the notice is sufficient and, I do not find any infirmity or illegality in the finding rendered by both the Courts below.

13.Non-examination of Postman is not fatal on the facts and circumstances of the case especially, in view of the fact that under Ex.C.2, Court summons have been duly served on the accused as extracted above. Thus, the signature in the cheque is admitted and the cheque was issued from the account maintained by the accused and on dishonor, necessary legal notice has been sent to the registered address of the accused, which was returned with an endorsement 'addressee left'. In

view of the presumption in the aforesaid provision of law, both the Courts below have rightly come to the conclusion that the private complainant is entitled to the benefit of presumption under Section 139 of Negotiable Instruments Act and on the contrary of failure by the accused to probablise his case, both the Courts below have rightly laid conviction and passed sentence.

14. In the result, such finding given by both the Courts below being well merited and well considered, does not warrant any interference by this Court. Accordingly, this Criminal Revision Case is dismissed, confirming the order dated 12.10.2010 in S.T.C.No.89 of 2007 by the learned Judicial Magistrate No.3, Salem as confirmed by the order dated 26.07.2011, in C.A.No.164 of 2010 by the learned Additional District and Sessions Judge, Fast Track Court No.2, Salem.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Myr

To

1. The Additional District and Sessions Judge,
Fast Track Court No.II, Salem.

2. The Judicial Magistrate No.3, Salem.

3. The Chief Judicial Magistrate, Salem.

4. The Additional Public Prosecutor,
Madras High Court, Madras.

5. The Superintendent of Police, Salem District.

6. The Section Officer,
Criminal Section, High court,
Madras.

CRL.R.C.No.1200 of 2011

SSI(CO)
GN(23/01/2019)