Bail Slip

The Petitioner/Accused namely T.R.Paramasundaram was directed to be released on bail as per the order of this Court dated:23/11/2011 made in MP.1/2011 in CRL.R.C.No.1523/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2018

PRONOUNCED ON : 03.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1523 of 2011

T.R.Paramasundaram ... Petitioner / Appellant / Accused

vs

P.Gobinath ... Respondent / Respondent / Complainant

PRAYER: Criminal Revision Case is filed under Sections 397and 401 of Cr.P.C., praying to set aside the order dated 13.10.2011 made in C.A.No.240 of 2007 on the file of the Additional Sessions Court / Fast Track Court No.I, Erode confirming the conviction imposed in the judgment dated 23.10.2007 made in C.C.No.2 of 2003 on the file of the District Munsif Cum Judicial Magistrate, Perundurai.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.N.Baskaran
for Mr.A.P.Sathiyamoorthy

ORDER

The convicted accused is the revision petitioner herein. He has filed this Criminal Revision Case to set aside the order dated 13.10.2011 made in C.A.No.240 of 2007 on the file of the Additional Sessions Court / Fast Track Court No.I, Erode, confirming the conviction imposed in the judgment dated 23.10.2007 made in C.C.No.2 of 2003 on the file of the District Munsif Cum Judicial Magistrate, Perundurai, sentencing him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only) in default to undergo three months simple imprisonment for the alleged offence under Section 138 of Negotiable Instruments Act.

2.The private complainant has filed a private complaint in C.C.No.2 of 2003 before the learned District Munsif Cum Judicial Magistrate, Perundurai, alleging that the accused borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) from the complainant, namely, T.P.Gobinath (P.W.1) as a hand loan on 07.07.2002 for his urgent necessity. In order to discharge the said liability, the accused has issued a cheque for Rs.2,00,000/-, dated 06.08.2002 (Ex.P.1). The complainant has presented the said cheque in the bank for collection on 09.08.2002 and the same was returned as "In sufficient Funds" on the same date with a bank memo (Ex.P.2). The debit advice has been marked as Ex.P.3. Then the accused met the complainant on 10.08.2002 and requested to present the cheque on 11.11.2002. Accordingly, Ex.P.1, cheque was again presented in the bank for collection on 11.11.2002. That time also the cheque was returned on the same ground with a bank memo (Ex.P.4). The debit advice dated 11.11.2002 has been marked as Ex.P.5. Thereafter, the complainant has issued a Lawyer's notice on 22.11.2002, calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the said notice. The postal receipt has been marked as Ex.P6. The accused has received the said notice on 29.11.2002. The postal acknowledgment and office copy of the notice were marked as Ex.P.7 and Ex.P.8 respectively. But the accused did not pay the amount. On the contrary, he has sent a reply notice with unconnected facts and hence, the complainant has filed a complaint under Section 138 of Negotiable Instruments Act. The reply notice and the complaint were marked as Ex.P.9 and P.10 respectively. The bank manager of the Oriental Bank of Commerce, Erode Branch was examined as P.W.2 and the copies of the account opening form of the accused, statement of accounts of the accused and cheque return register were marked as Ex.P.11 to P.13 respectively.

3.In support of his plea, he has examined himself as P.W.1, the Bank Manager is examined as P.W.2 and marked Exs.P.1 to P.13. On behalf of the accused / revision petitioner, D.W.1 and D.W.2, who are the Bank official were examined and examined independent witness as D.W.3 and Exs.R.1 to R.5 were marked.

4.On consideration of both oral and documentary evidence, the trial Court has found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo rigorous imprisonment for one year and also imposed a fine of Rs.5000/- (Rupees Five Thousand Only) in default to undergo simple imprisonment for three months.

5.On appeal, in C.A.No.240 of 2007, the Additional Sessions Judge, Fast Track Court No.1, Erode, confirmed the conviction and sentence passed in C.C.No.2 of 2003 on the file of the learned District Munsif Cum Judicial Magistrate, Perundurai dated 23.10.2007.

6.Against the order of the Lower Appellate Court, the revision petitioner / accused has approached this Court by way of filing this Criminal Revision Case.

7.Heard the learned counsel appearing for the revision petitioner and 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.On perusal of the evidence of P.W.1 and Ex.P.1, cheque and the legal notice issued therefor, it is seen that on 07.07.2002, the accused borrowed a sum of Rs.2,00,000/- from him as a hand loan for his urgent necessity and to discharge the said debt the accused has issued a cheque for Rs.2,00,000/- dated 06.08.2002. To substantiate his case, the complainant has examined himself as P.W.1 and also marked the said cheque as Ex.P.1. The accused has not denied that the signature found on Ex.P.1 cheque was not that of him. According to the accused, during the year 1999, he kept some signed blank cheques for his convenience in the dash board of the lorry cabin and the said cheques were taken away by unknown persons at the night hours, when the lorry was parked in front of his house. Due to pressure of work, he did not bother about the loss of the cheques and only after receipt of the statutory notice, he came to know that the complainant has misused one of the said cheques in order to get wrongful gain over the same. Once the cheque relates to the account of the accused and he accepts and admits the signature on the said cheque, the initial presumption as contemplated under Section 139 of Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of Negotiable Instruments Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.

10.Accordingly, both the Courts below have come to the conclusion that since the accused has admitted and accepted that the cheque was issued in his account and also admitted the signature in the cheque, the initial presumption is done in favour of the private complainant. The suggest case of the defence is that some of the signed blank cheques have been kept in the dash board of the lorry of the accused and it was stolen by some unknown persons, when the lorry was parked in front of his house and one of the said cheques said to have been stolen, has been misused by the complainant and lodged the private complaint.

11.Admittedly, the accused has not offered any explanation in his evidence about whether he has lodged any complaint before the police and instructed D.W.1 Bank official not to honour the cheque or to stop the payment to the cheque. If the cheques were lost, an ordinary prudent man would normally lodge a complaint to the police or he would give instructions to his bank for stopping payment to the said cheque, which was admitted by D.W.2 in the cross-examination that he did not do both. The conduct of the accused in not taking any steps despite opportunity for reporting alleged taking away of the signed bank cheques in itself is enough material to draw adverse inference against the accused.

12.Yet another point is that for Ex.P.8 legal notice issued by the complainant, though Ex.P.9 reply notice was received, the content does not relevant to this case. The different in the contents between Ex.P.8 legal notice and Ex.P.9 reply notice has been discussed in detail by the Lower Appellate Court. Therefore, both the Courts below have held that if really typographical error was caused, normally the accused should have sent rejoinder with correct particulars or he should have entered into the witness box and gave explanation.

13.It remains to be stated that legal notice that is mandatory under Section 138 Negotiable Instruments Act is statutory in character. That being the case, in the event of any typographical error or a mistake crept in due advertence, normally rejoinder should follow with correct particulars, failing which, adverse inference has to be drawn. In this case, the accused has not offered any explanation for non-issuance of any such rejoinder and also the case against him. Thus, this Court finds that defence projected by the accused during the cross examination of P.W.1 and projected through D.W.2 in the witness box appears to be inconsistent with the contents of Ex.P.9, which is the reply notice for Ex.P.8, Lawyer notice.

14.On perusal of the evidence adduced on behalf of the accused, it is seen that the accused has not entered into the witness box to offer any explanation for the non-issuance of reply notice or to make any explanation in support of his case that Ex.P.9 was wrongly sent or mistake has been crept in due inadvertence. Furthermore, even in the answer given in 313 Cr.P.C., questioning that he has not offered any explanation nor filed any statement. Thus, in the absence on this part for the above stated facts, the accused has not adduced acceptable evidence to show that his explanation in Ex.P.9 was the reply notice and in the absence of positive evidence to prove the suggest case that the cheque said to have been stolen from the lorry dash board of the lorry of the accused and in the absence of any steps being taken to file the complaint before the police or to inform the bank to stop the payment to the cheque, either in reply to the legal notice Ex.P.8 and in disclosing of any fact in connection therewith by entering into the witness box and on failure to offer any explanation, both the Courts below have rightly come to the conclusion that the accused has failed to probablise the suggestive case and the said finding, being well merited and well considered, does not warrant any interference by this Court at this revisional stage.

15.In the result, this Criminal Revision Case is dismissed, confirming the order dated 23.10.2007 made in C.C.No.2 of 2003 on the file of the District Munsif Cum Judicial Magistrate, Perundurai as confirmed by the order dated 13.10.2011 made in C.A.No.240 of 2007 on the file of the Additional Sessions Court / Fast Track Court No.I, Erode.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
1.The Additional Sessions Judge,
Fast Track Court No.I, Erode.

2.-do- Thro' Principal Sessions Judge,
Erode.

3.The District Munsif Cum Judicial Magistrate,
Perundurai.

4.-do- Thro' chief Judicial Magistrate, Erode.

5.The Public Prosecutor,
Madras High Court, Madras.

Copy to
The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.82817

CRL.R.C.No.1523 of 2011

SV(CO)
GSP(11/01/2019)