

BAIL SLIP

The Petitioner/Accused namely, Nandakumar, S/o. Thiruvenkatasamy was directed to be released on bail as per order of this Court dated 16.03.2011 in M.P.No.1/2011 in CrI RC.No.411/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2018

PRONOUNCED ON: 22.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.411 of 2011

Nandakumar ... Petitioner/Appellant/
Accused

-Vs-

N.Shanmugam ... Respondent/Respondent/
Claimant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the judgment dated 04.02.2011 in C.A.No.200 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore, which was confirmed by the judgment dated 04.09.2010 in C.C.No.1086 of 2007 on the file of the learned Judicial Magistrate No.VIII, Coimbatore.

For Petitioner : Mr.C.Deivasigamani

For Respondent : Mr.T.Senthilkumar

ORDER

The accused is the revision petitioner herein. He has filed this revision case to set aside the judgment dated 04.02.2011 in C.A.No.200 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore, confirming the judgment of the trial Court made in C.C.No.1086 of 2007, dated 04.09.2010 on the file of the learned Judicial Magistrate No.VIII, Coimbatore.

2.The case of the prosecution is that on 22.02.2001, the accused has borrowed a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) by promising to repay the amount with interest at the rate of 24% and executed a pro-note. But, he has not repaid the amount, despite various demand and thereafter on 06.12.2001 and 24.12.2001, he has paid a sum of Rs.30,000/- (Rupees Thirty Thousand Only). On presentation, the same was returned and after observing the formalities, the private complainant has filed a private complaint against the accused before the learned Judicial Magistrate No.VIII, Coimbatore and the same has been taken on file as C.C.No.1086 of 2007 and it was allowed and the accused was convicted to undergo simple imprisonment for six months and imposed a fine of Rs.1000/- in default to undergo simple imprisonment for one month.

3.On appeal, C.A.No.200 of 2010 was dismissed by the learned Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore. Hence, this Criminal Revision Case has been filed by the revision petitioner / accused.

4.The learned counsel appearing for the revision petitioner contended that the respondent has clearly stated that he has handed over the cheque to one Ashok Kumar from whom the appellant has received a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) as hand loan in the year 1996 and handed over the disputed cheque and pro-notes. The petitioner has clearly established that the respondent is doing business without licence and also did not mention the debt amount in his income tax return or books of accounts.

5.The learned counsel appearing for the respondent made submissions in respect of the judgment of the Courts below.

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

7.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.

8.After hearing the rival submissions of both the parties and after perusing the oral evidence of P.W.1 and D.W.1 to D.W.3 and the documentary evidence of Exs.P.1 to P.5 and Exs.D.1 to D.5, it is seen that for the amount borrowed, the accused has executed a pro-note and he has not disputed the signature in the cheque. However, during the cross-examination of D.W.1 and D.W.2, it is projected that he had money transaction only with Ashok Kumar and the cheque given to Ashok Kumar has been misused

by the private complainant herein.

9. After perusing the oral evidence of P.W.1 and documentary evidence of Ex.P.1 pro-note and returned cheque, which is marked as Ex.P.2, which was returned under Ex.P.3, Bank Memo, for which the legal notice has been issued under Ex.P.4 and reply returned cover, which is marked as Ex.P.5, the trial Court has come to the conclusion that the private complainant has discharged the initial burden on his shoulder, so as to draw statutory presumption in his favour in accordance with Section 139 of Negotiable Instruments Act and now, it is for the accused to rebut the said presumption.

10. On behalf of the accused, he examined himself as D.W.2, who has specifically projected a defence case that Ex.P.4 legal notice was not properly served, consequently, the private complaint is defective. Further, he could state that few years before, at the time of trial, the police constable along with private complainant came to his house and there was enquiry in the police station, in which he had sought assistance of D.W.3, his friend and in police statement, he has paid the amounts and obtained receipt for the entire payment and copy of the receipt is marked as Ex.R.4 and Xerox copy of the original, which is marked as Ex.R.5.

11. It remains to be stated that D.W.3, Karthigeyan deposed that he is the friend of the D.W.2, Nandakumar / accused herein and also supported the case of the defence to certain extent. However, in the cross-examination, he had fairly admitted that in the enquiry held at the police station, he came to know that there was a money transaction between the private complainant and the accused, for which the accused / D.W.2 has promised to pay amount in due course and on his behalf, D.W.3 has paid Rs.10,000/- (Rupees Ten Thousand Only) and obtained Ex.R.4 receipt. However, this Court finds a correction in the date. According to the accused, the original receipt was misplaced and without correction, he has taken photocopy i.e., Ex.R.5. From the answer elicited in the cross-examination of D.W.3, Karthikeyan, both the Courts below have categorically come to the conclusion that there was a prior acquaintance between the private complainant and the accused and as a part of the money transaction only, a sum of Rs.10,000/- has been paid by D.W.3 on behalf of D.W.2 / accused and accordingly, negated the case of the accused.

12. It remains to be stated that though D.W.2 / accused has filed Exs.D.1 to D.3, none of the address matched with the address found in the bank passbook and hence, both the Courts below have come to the conclusion that the accused has not updated his address in the passbook of the bank, in which the

cheque has been issued and therefore, come to the conclusion that the plea raised by the defence stands for no reason and he cannot take advantage of his non-update of bank address in the bank passbook, accordingly, rejected that Ex.P.4 was not duly served. In fact, for the very same address, as mentioned in the Ex.P.4, the Court's summon has been sent in C.C.No. 1086 of 2007 and the same was served upon him and he also contested the case. Therefore, in view of the above discussion, this Court finds that the plea raised by the defence that he never resided in the address mentioned in the complaint and Ex.P.4 notice as defective cannot be accepted and the same is hereby negated.

13. In view of the submission made by D.W.3 in the witness box about earlier money transaction between the private complainant and the accused, both the Courts below have found that the defence failed to probabilise the suggestive case that the cheque in issue was not supported by consideration as a corollary and held that he has failed to rebut the presumption and consequently, awarded conviction and sentence as stated supra.

14. In the result, such finding given by both the Courts below being well merited and well considered, does not warrant any interference at this revision stage and accordingly, this revision is devoid of merits and liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. The Trial Court shall take steps to secure the accused/petitioner to commit him in prison to serve the remaining period of sentence. Bail bond, if any, executed by the petitioner and the sureties shall stand cancelled.

Myr/Jrl

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2. The Judicial Magistrate No.VIII,
Coimbatore.

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

4. The Superintendent of Police,
Coimbatore Dist.

5. The District collector,
Coimbatore.

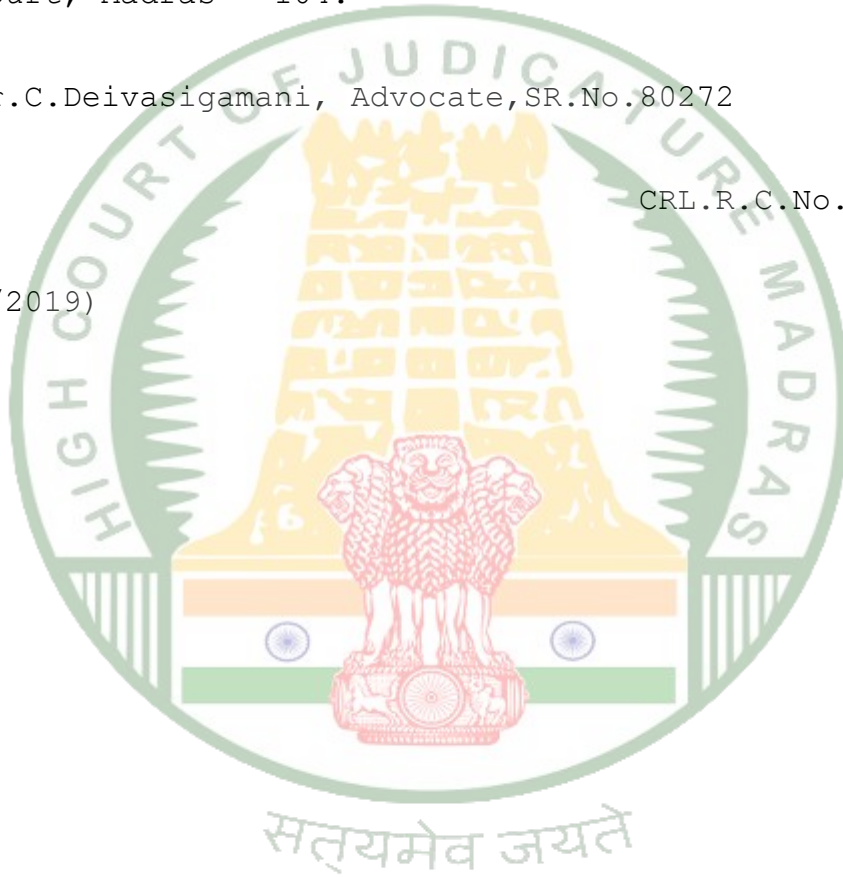
Copy to:-

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

+1cc to Mr.C.Deivasigamani, Advocate, SR.No.80272

CRL.R.C.No.411 of 2011

ssi (CO)
KAK (20/03/2019)



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