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BAIL SLIP

The petitioner/Accused namely M.Ramanathan, was directed to be released on bail as per order of this Court dated 28.04.2011 made in CRL MP No.1 of 2011 in CRL RC No.687 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2018
PRONOUNCED ON : 05.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.687 of 2011

M.Ramanathan ... Petitioner / Appellant / Accused

-Vs-

M.Vellingiri ... Respondent / Respondent /Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 & 401 of Criminal Procedure Code, praying to set aside the judgment passed in C.A.No.196 of 2010 on the file of the learned Additional District Judge, FTC No.III, Coimbatore, dated 29.03.2011, modifying judgment passed in C.C.No.525 of 2007 on the file of the learned Judicial Magistrate No.II, Coimbatore dated 24.08.2010.

For Petitioners: Mr.S.Gunalan

For Respondent : Mr.N.R.Kaushik

ORDER

The convicted accused is the revision petitioner herein. He has filed this revision case to set aside the judgment passed in C.A.No.196 of 2010 on the file of the learned Additional District Judge, Fast Track Court No.III, Coimbatore, dated 29.03.2011, modifying the judgment passed in C.C.No.525 of 2007 on the file of the learned Judicial Magistrate No.II, Coimbatore, dated 24.08.2010.

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2.The respondent herein preferred a private complaint against the accused before the learned Judicial Magistrate No.II, Coimbatore, alleging that the revision petitioner gave a sum of Rs.4,00,000/- (Rupees Four Lakhs Only) to the petitioner in February, 2015 on condition to repay the amount within a period of two years with 24% interest per annum. Thereafter, the revision petitioner gave a post dated cheque drawn on Lakshmi Vilas Bank, Gandhipuram, in favour of the respondent herein. Later, the revision petitioner paid a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each on four occasions i.e., Rs.1,00,000/- (Rupees One Lakh Only) towards interest for 13 months. Thereafter, the revision petitioner defaulted in payment of interest. When the respondent herein demanded the revision petitioner, asked to realize the amount by encashing the post dated cheque. The respondent herein on 16.11.2006 presented the cheque for realization, but the same was returned as account closed on 21.11.2006. Legal notice was sent on 27.11.2006 by the respondent herein. The revision petitioner replied the legal notice but not come forward to pay the due.

3.The private complainant has examined himself as P.W.1 and marked Ex.P.1 to P.7. On behalf of the accused, the Manager, Lakshmi Vilas Bank, Gandhipuram examined as D.W.1 and marked Exs.D.1 to D.13.

4.Based upon the oral and documentary evidence, the trial Court has convicted the revision petitioner and sentenced him to undergo one year simple imprisonment and imposed to pay a fine of Rs.1000/- (Rupees One Thousand Only).

5.On appeal, in C.A.No.196 of 2010, the learned Additional District Judge, Fast Track Court No.III, Coimbatore has reduced the sentence from one year simple imprisonment to three months simple imprisonment.

6.The short point arises for consideration in this criminal revision case is that whether the conviction and sentence passed by the trial Court is sustainable in law?.

7.Based upon the oral evidence of P.W.1 coupled with Exs.P.1 to P.6, the trial Court has come to the conclusion that the cheque was issued by the respondent and the same has been dishonored on presentation. After observing the formalities, the case has been instituted. During the cross-examination of P.W.1, it was suggested that a signed cheque was given to the respondent herein in connection with chit fund transaction conducted by him and his wife and the same has been misused,

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however, it was denied. The trial Court has held that since the accused has not denied the signature in the cheque and he is entitled for presumption under Section 139 of the Negotiable Instruments Act, based upon the evidence of defence side, the trial Court held that the accused has failed to probablise the suggestive case. It is seen that the Lower Appellate Court, considering the documentary evidence of Exs.D.11 to D.13 has held that the cheque has been issued by him. The said finding has been challenged in this revision.

8.Now it is to be considered that whether the accused has discharged the statutory presumption or rebutted the presumption by probabilising his case?.

9.The first ground on which the revision petitioner projected his case is that a person will not retain one of the cheque leafs issued during the year 1995 to cheat the complainant in the year 2005 and the next plea is that no surety has been obtained for lending huge amount of Rs.4,00,000/- and any suit has been filed to recover the cheque amount. As stated supra, the signature in the disputed cheque was not denied by him and hence, the finding of both the Courts below that the respondent what he is entitled for statutory presumption is found to be correct.

10.Now, coming to the point of rebutting such presumptions, it is not usual practise or conduct of the ordinary person to keep the cheque pertaining to the year 1995. P.W.2 Bank Manager has stated that the cheque in issue has been issued in the year 1995-96 and the account was closed on 22.01.2005. However, entries made in Ex.D.4 will lead to the conclusion that certain transaction has been taken by the revision petitioner / accused. Normally, no ordinary man will retain one of the cheques pertaining to the year 1995 in order to discharge the loan in the year 2005. On perusal of Ex.P.1 and the evidence of D.W.1, it is seen that the cheques issued earlier and after Ex.P.1 had been duly passed by the bank. However, it remains to be stated that when my attention was drawn to Ex.D.3 counter foil of the cheque book filed by the accused before the trial Court, it gives an indication that the counter foil Ex.D.3 is not in the order of date issue. In other words, the cheques have not been issued in the order of dates, but in some of the counter foil, there is no date. Hence, the finding of the Lower Appellate Court that under Ex.D.3 counter foil, the cheques are not issued in the order of serial number, since it is found that some of the cheques are issued in the year 1997 and therefore, based upon the documentary evidence of the accused Ex.D.4, it will not lead to the conclusion that

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the cheque was issued in the year 1996, in view of the factual position as stated supra. The date of the cheque in issue Ex.P.3, is 18.10.2006. However, it appears that on the day, the account has been closed, since as per the evidence of D.W.1, Manager, account was closed on 22.11.2005 itself.

11.It is a normal business transaction and the bank proceeding that whenever an account is closed, the remaining cheque leafs will be calculated by the bank and in respect of missing cheque leafs necessary letter of undertaking will be taken by the concerned bank. Therefore, the trial Court, taking note of the usual practise in the bank regulations and also the above stated factual position as could be seen from Ex.D.3, counter foil and Ex.D.4, has rightly come to the conclusion that this mistake as projected by the accused cannot be taken advantage in favour of the accused, since he himself has not issued cheque in the serial order according to the date wise and hence, the Lower Appellate Court refused to accept the said case of the accused. The said finding does not call for any interference. The next point for consideration is that there is no money transaction between the private complainant and the accused.

12.The learned counsel appearing for the revision petitioner made emphasis that neither in the complaint nor in the legal notice, the date of the cheque has been mentioned by the private complainant. However, it has been mentioned by P.W.1 in the proof of affidavit and furthermore, there is an acknowledgment of date through Exs.D.1 to D.13, wherein, running serial number of the present cheque has been given and the same has been honoured by the bank and hence, the finding of the Lower Appellate Court that on the pre-existing legally acceptable date, the accused had issued cheques vide Exs.D.10 to D.13 cheques, is found to be well considered and well merited. In view of the said finding, there was a pre-existing liability between the parties in the absence of any explanation as to what is the actual amount and the amount mentioned in the cheques Ex.D.10 to D.13 has not been spoken to by the accused.

13.Accordingly, this Court has no hesitation to hold that as per the documentary evidence filed by the accused himself under Exs.D.10 to D.13 that there is a pre-existing legally enforceable debt and as per Ex.D.3 counter foil, the accused has not in the habit of issuing cheques in a serial wise date and the cheque issued by the accused in favour of the private complainant has been honoured in respect of cheque in Exs.D.10 to D.13 and hence, the finding of the Lower Appellate Court that the revision petitioner has failed to probablise the suggest

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case, is well merited and well considered and does not warrant any interference.

14.In this view of the matter, the conviction and sentence passed under Section 138 of Negotiable Instruments Act need not be interfered with at this revisional stage and the sentence awarded as modified by the Lower Appellate Court cannot be termed as excessive.

15.In the result, this Criminal Revision Case is dismissed. The conviction and sentence passed by the trial Court in C.C.No.525 of 2007, dated 24.08.2010 as confirmed by the learned Additional District Judge, Fast Track Court No.III, Coimbatore is confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Myr

To

1.The Judicial Magistrate No.II,
Coimbatore.

2.The Chief Judicial Magistrate,
Coimbatore.

3.The Additional District Judge,
Fast Track Court No.III, Coimbatore.

4.do through The Principal Sessions Judge,
Coimbatore.

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

+1 cc to M/s.s.Gunalan, Advocate Sr.No.83944

Order made in
CRL.R.C.No.687 of 2011

SPD(CO)
CSL/21.01.2019

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