

Bail Slip

The Petitioner/Accused namely D.Joshua Paul, S/o.P.Devathurai was directed to be released on bail as per order dated 17/01/2013 in CrI.MP.Nos.1 and 2 of 2013 in CrI.RC.No.47/2013 on the file of this order.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision No.47 of 2013

D.Joshua Paul ... Petitioner/Accused

Vs

M/s.Sree Gokulam Chit
& Finance Co. P. Ltd.,
Rep. by Assistant Manager,
N.M.Balamurali, M/A-40 years,
S/o.A.P.Narayan Kurup,
No.1638, Hope College,
Jawahar Building,
Peelamedu,
Coimbatore 641 004.

... Respondent/Complainant

Prayer:- Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to call for the records on the file of the learned Principal District Judge, Coimbatore in CrI.A.No.67 of 2012, dated 31.08.2012 confirming the conviction in C.C.No.281 of 2011, dated 06.02.2012 on the file of the Fast Track, Judicial Magistrate No.2 Coimbatore and set aside the same.

For Petitioner : Mr.A.Thirumaran

For Respondent : No Appearance

ORDER

The present criminal revision has been filed against the order dated 31.08.2012 passed in CrI.A.No.67 of 2012, on the file of the learned Principal District Judge, Coimbatore confirming the judgment passed in C.C.No.281 of 2011 dated 06.02.2012 on the file of the Judicial Magistrate No.2, Fast Track Court, Coimbatore and set aside the same.

(ii) The accused stood charged for the offence under Section 138 of the Negotiable Instruments Act. The trial Court by judgment dated 06.02.2012 in C.C.No.281 of 2011 convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple Imprisonment for three months and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for one month. Against the said judgment, the accused filed an appeal in CrI.A.No.67 of 2012 on the file of the Principal District Judge, Coimbatore. The appellate Judge by his judgment dated 31.08.2012 in CrI.A.No.67 of 2012 confirmed the conviction and sentence imposed on the accused. Aggrieved by the same, the present criminal revision case has been filed by the petitioner.

2. The facts leading to prefer this revision are as follows :-

(i) The respondent/complainant Company is carrying on business in chits and represented by N.M.Balamurali, Assistant Manager. The accused is the subscriber in a chit for Rs.50,000/- and executed necessary documents while entering into the chit. The accused was a successful bidder of the said chit and hence, the chit amount was paid by the complainant. Later, the accused defaulted in paying the dues. Hence, several demands were made by the complainant. To discharge the liability, on 31.07.2006, the accused issued a cheque bearing No.662293 for Rs.27,500/- drawn on Catholic Syrian Bank Ltd. When the said cheque was presented for collection, the same was dishonoured for the reason 'Account closed'. Hence, the complainant issued a legal notice dated 12.08.2006 and the same was returned as unserved with an endorsement 'not claimed'. In spite of legal notice, the accused has not come forward to pay the debt and issued the cheque knowing that his account was closed. Hence, the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act. Therefore, the complainant lodged a complaint against the accused before the learned Judicial Magistrate No.VI, Coimbatore.

(ii) After taking cognizance, on appearance of the accused, he was questioned on the allegation levelled against him, for which, he pleaded not guilty. Hence, he was put on trial.

(iii) Under the said situation, in the course of trial proceedings, on the side of the complainant, the complainant examined himself as P.W.1 and 8 documents were marked as Exs.P.1 to Ex.P.8.

3. When the incriminating materials were put to the accused under Section 313 Cr.P.C, the accused denied the same as false. However, he has not come forward to examine any witness on his side. But, he marked 2 documents as Exs.D.1 and Ex.D.2.

After concluding the trial, the learned Judicial Magistrate No.II, Coimbatore came to the conclusion that the accused is found guilty for the offence under Section 138 of the Negotiable Instruments Act, as alleged by the complainant and sentenced him to undergo 3 months Simple Imprisonment and to pay fine of Rs.2,000/- in default to undergo one month simple imprisonment. Against which, now, the accused filed an appeal in CrI.A.No.67 of 2012 on the file of the V Additional District and Sessions Court, Fast Track Nourt No.3, Coimbatore. The first appellate Court dismissed the said appeal by judgment dated 31.08.2012 confirming the conviction and sentence passed in C.C.No.281 of 2011. Aggrieved by the said judgment, the present Criminal Revision has been filed before this Court for punishing the accused.

4.I have heard Mr.A.Thirumaran, learned counsel appearing for the petitioner and perused the materials available on record.

5.Though notice was not served on the respondent, substituted service has been effected on 15.10.2008. The name of the respondent is also printed in the cause list. But, there is no representation on behalf of the respondent either in person or through the counsel. Hence, this Court is inclined to dispose of the Criminal revision on merits.

6.The learned counsel for the petitioner submitted that statutory notice was not served on the petitioner and hence, the complaint is not maintainable. Moreover, the address taken in the statutory notice is different from where he was residing. The address mentioned in the cause title and the address mentioned in the returned cover was different. The returned postal cover shows that notice has not been served on the petitioner. Therefore, cause of action does not arise under Section 138 of the Negotiable Instruments Act. Hence, the petition filed under Section 138 of the Negotiable Instruments Act is unsustainable.

7.The learned counsel for the petitioner further submitted that the cheque was given only for the security purpose, when the accused became the successful bidder and the petitioner has not given the cheque for legally enforceable debt. Moreover, the petitioner has paid the entire chit amount and hence, the petitioner is not liable to pay any amount to the complainant. The complaint will not lie as the cheque was issued for a time barred debt as the chit commenced in 2001 and terminated in 2002 and the same was presented for collection in the year 2006. But, both the Courts below, without considering these aspects, erroneously passed the impugned orders and the same needs interference.

8.This Court considered the submissions made by the learned counsel for the petitioner and perused the records carefully.

9.On a perusal of records, it is seen that the address mentioned in the returned postal cover and the address mentioned in the private notice is different. In the returned postal cover, the address has been mentioned as Mr.D.Joshva Paul, Proprietor, M/s. Kamalam Stores, S/o. P.Devathurai, Prop. Kamalam Stores, Presently, Hostel Coordinator, at Karunya Institute of Technology and Science, Deemed University, Karunya Nagar, Coimbatore 641 114 and the same address was also mentioned in the cause title. But, the address mentioned in Ex.D.2, the private notice is Mr.D.Joshua Paul, C/o. P.J. Jacob, Will Grace, Parri Nagar, Chungam By pass Road, Coimbatore-45 and the same was received by the petitioner. On receiving the said private notice, the petitioner appeared before the Court below. But, the statutory notice sent to the address has been returned with an endorsement "Not claimed". For proving the said endorsement, no person has been examined from the postal department.

10.Since the endorsement made in Ex.P.5 shows that "not claimed" and returned to sender, the private notice sent to the petitioner has been served. Hence, it is deemed to be served under Section 27 of the Indian Evidence Act. Notice sent to the correct address though is returned, is deemed to be served. Therefore, though endorsement made in Ex.P.5 as "Not claimed", it is deemed to be served.

11.In respect of the submission made by the learned counsel for the petitioner that the cheque has been issued in the year 2001 - 2002, only for the purpose of security but the same has been presented for collection in the year 2006 and the entire chit amount has been paid by him, it is seen that the petitioner has not denied the cheque and the signature found in the cheque. Moreover, P.W.1 in his evidence has stated that the Chit fund company is not having the habit of receiving any cheque, while the subscriber taking the chit.

12.Under such circumstances, it is the bounden duty of the petitioner to prove that the cheque has been issued only for the purpose of security and in whose presence the cheque has been issued to the chit company. But, the petitioner failed to prove the same. Moreover, execution of the cheque and the signature of the cheque have not been denied by the petitioner. In such circumstances, both the Courts below, have rightly drawn the adverse inference that the cheque has been issued only for legally enforceable debt and the cheque has been time barred one.

13.In view of the above, it is seen that the trial Court, after considering the entire evidence, has rightly convicted the accused and sentenced him as stated above and the same was rightly confirmed by the first appellate Court. Hence, I find no illegality or infirmity or perversity in the judgment passed by both the Courts below and there is no reason to interfere with the same.

14.Since the first appellate Court is a fact finding Court, which recorded the reasons for its finding as to whether the petitioner has committed offence under Section 138 of the Negotiable Instruments Act, while exercising revisional power, this Court cannot sit in the armchair of the appellate Court and re-appreciate the evidence let in by the parties.

In the result, the Criminal revision case fails and the same is dismissed. The conviction and sentence imposed on the petitioner under the judgment dated 06.02.2012 passed in C.C.No.281 of 2011 on the file of the Judicial Magistrate, Fast Track Court No.II, Coimbatore and dismissal of the appeal in C.A.No.67 of 2012 dated 31.08.2012 on the file of Principal District and Sessoins Judge, Coimbatore are hereby confirmed. The trial Court is directed to secure the accused and send him to jail for serving the remaining period of sentence if any. The sentence already undergone, if any, by the accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge, Coimbatore.
- 2.The Judicial Magistrate, Fast Track Court No.II, Coimbatore.
- 3.The Public Prosecutor, Puducherry.
- 4.The Chief Judicial Magistrate, Coimbatore.
- 5.The 5th Additional District and Sessions Judge,
(Fast Track Court No.3), Coimbatore.

Copy to : The Section Officer, Criminal Section
High Court of Madras.

CrI.R.C.No.47 of 2013

AKM/ 27.08.19/ 5P-7C /