

BAIL SLIP

The Appellant/Petitioner/Accused namely B.Mahalakshmi was directed to be released on bail as per the order of this court dated 07/08/2013 in MP.No. 1/13 in Crl.Rc.No. 992 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.992 of 2013

B.Mahalakshmi ...Petitioner

Vs.

L.Arun Prasad ...Respondent

PRAYER:- The Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to call for the records on the file of the learned I Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.47 of 2012 dated 06.06.2013 against the judgment and sentence passed in C.C.No.500 of 2011, on the file of the learned Judicial Magistrate, (Fast Track Court) Vellore, Vellore District dated 23.02.2012 and set aside the judgment dated 06.06.2013.

For Petitioner: Mr.E.Kannadasan

For Respondent: Mr.M.Mohanraj - No Appearance

ORDER

The Criminal Revision has been filed against the conviction order dated 06.06.2013 passed by the learned I Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.47 of 2012 confirming the judgment dated 23.02.2012 passed by the learned Judicial Magistrate, (Fast Track Court) Vellore, Vellore District in C.C.No.500 of 2011.

2 The petitioner herein is an accused and the respondent is complainant. The petitioner had borrowed a sum of Rs.60,000/- for her family expenses from the respondent on 15.01.2010. On 20.05.2010, the petitioner issued a cheque bearing No.284972 for

a sum of Rs.60,000/- to the respondent for repayment of loan amount and she assured that the cheque will be honoured. But, when the respondent presented the cheque for collection, the same was returned with an endorsement "INSUFFICIENT FUNDS" on 21.05.2010. Hence the respondent issued a Statutory Notice dated 03.06.2010. As there was no reply from the petitioner, the respondent filed a complaint before the learned Judicial Magistrate No.1, Vellore, Vellore District, which was taken on file in C.C.No.500 of 2011. The learned Judicial Magistrate, after trial, found the accused guilty of offence punishable under Section 138 of Negotiable Instruments Act and convicted the petitioner and sentenced to undergo Rigorous imprisonment for a period of six months with fine of Rs.3,000/-, in default, to undergo simple imprisonment for a further period of two weeks by order dated 23.02.2012. Aggrieved against the judgment of conviction, the petitioner/accused had preferred an appeal in CrI.A.No.47 of 2012 before the learned I Additional District and Sessions Judge, Vellore, Vellore District. The learned Sessions Judge, after giving due opportunities to both the parties, by judgment dated 06.06.2013, dismissed the appeal and confirmed the judgment of conviction passed by the trial Court.

3 Aggrieved against the judgment of conviction dated 06.06.2013, the petitioner has preferred the present criminal revision before this Court.

4 The learned counsel for the petitioner would submit that the petitioner had issued the cheque only for security purpose for the loan availed by her from the respondent and not for any legally enforceable debt. The respondent had not proved the fact that the cheque had been issued for legally enforceable debt. The trial Judge has failed to consider the above aspects and erroneously convicted the petitioner and sentenced to undergo rigorous imprisonment for six months with fine of Rs.3,000/-. The petitioner had already paid the fine amount imposed by the trial Court and hence sentence imposed by the trial Court shall be reduced.

5 When the matter is called, there is no representation for the respondent. Heard the learned counsel for the petitioner and perused the materials available on record.

6 The learned counsel for the petitioner/accused has reiterated the defence taken before the trial Court. The petitioner had admitted the issuance of the cheque and once issuance of cheques is admitted, it is for the petitioner to prove the fact that the cheque was not issued for legally enforceable debt. The petitioner/accused is bound to rebut the presumption under Section 139 of Negotiable Instruments Act, which favours the complainant, who is holder of the cheque. In the absence of any evidence to rebut the presumption, this Court

cannot interfere with the judgment of conviction made by the Courts below. However, considering the nature of the offence, this Court is inclined to modify the sentence alone.

7 Accordingly, the judgment of conviction made by the Courts below is hereby confirmed and the petitioner shall pay the cheque amount of Rs.60,000/- to the respondent/complainant as compensation under Section 357 (3) of Cr.P.C and directed to undergo three months rigorous imprisonment.

8 With the above observations and modifications, the criminal revision is partly allowed. The trial Court is directed to secure the petitioner/accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

cgi/ssi

To

1. The I Additional District and Sessions Judge, Vellore, Vellore District.
2. The Judicial Magistrate, (Fast Track Court), Vellore, Vellore District.
3. The Chief Judicial Magistrate, Vellore (For Information)

+1cc to Mr.E.Kannadasan, Advocate, S.R.No. 72054

Cr1.R.C.No.992 of 2013

VBA (CO)
GN(26/07/2019)

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