

Bail Slip
Crl.RC.No.1041/2011

The petitioner/Accused Ramadoss, S/o.Munusamy was directed to be released on bail as per order dated 29.7.2011 in MP.No.1 of 2011 in Crl.Rc.No.1041 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2018

Coram

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.R.C.No.1041 of 2011

Ramadoss ... Petitioner

Vs.

K.Sekar ... Respondent

PRAYER: This Criminal Revision Petition has been filed under Section 397 and 401 of Criminal Procedure Code as against the order in Criminal Appeal No.154 of 2011 ordered on 28.04.2011 on the file of Additional Sessions Judge, Fast Track Court-I, Erode, confirming the judgment passed by the Judicial Magistrate No.1 Erode, in C.C.No.68 of 2007 sentencing the petitioner to go for one year simple imprisonment and fine of Rs.2,000/- and if fine not paid one month simple imprisonment.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

The Criminal Revision has been preferred by the revision petitioner against the order in Criminal Appeal No.154 of 2011 ordered on 28.04.2011 on the file of Additional Sessions Judge, Fast Track Court-I, Erode, confirming the judgment passed by the Judicial Magistrate No.I, Erode, in C.C.No.68 of 2007 sentencing the petitioner to go for one year simple imprisonment and fine of Rs.2,000/- and if fine not paid one month simple imprisonment.

2.Though both the counsel are absent, this revision is pending from the year 2011. Hence this court is inclined to dispose of the revision petition on merits. The brief facts of the case leading to file this revision petition is as follows:

The revision petitioner borrowed a sum of Rs.50,000/- from the respondent (PW1) on 19.11.2006 and in order to discharge the

said debt, he issued a cheque i.e. Ex.P1 for Rs.50,000/- dated 20.12.2006. When the cheque was presented for encashment, the same was dishonoured by the banker with an endorsement (return memo) "account closed", which has been marked as Ex.P2. Immediately, the respondent has sent a legal notice to the revision petitioner 26.12.2006. The office copy of the notice and the postal acknowledgments were marked as Ex.P3 and Ex.P4. Though the revision petitioner received the statutory notice, he has not paid the amount or sent any reply to the complainant. Hence, the respondent had filed a complaint against the revision petitioner under Section 138 of Negotiable Instruments Act. The respondent has closed his evidence with PW1.

3.The only defence taken by the revision petitioner is that the cheque i.e. Ex.P1, was originally issued to one Kulandaivelu and the respondent has got the cheque from the said Kulandaivelu and has filed the present case. The above contention has not been substantiated by any materials except oral statement in the cross examination.

4.The Trial Court after considering the evidence and materials placed before the Court, found the Revision Petitioner guilty under Section 138 of the Negotiable Instruments Act, 1881, imposed the punishment to undergo one year simple imprisonment and fine of Rs.2,000/- and if the same is not paid one month simple imprisonment. Aggrieved by the above findings of the Trial Court, the revision petitioner had challenged the same before the First Appellate Court. The First Appellate Court had also confirmed the order of the Trial Court. As against which, the present Revision Petition has been filed.

5.On a perusal of the entire materials placed before this Court, this Court finds that the cheque in question was issued to the respondent by the Revision Petitioner, which has not been disputed by the Revision Petitioner and when the above cheque was presented for encashment, the same was dishonoured by the banker. Immediately, the respondent /complainant sent a legal notice to the Revision Petitioner, demanding the amount within a statutory period and also lodged a complaint. These facts are also not disputed by the Revision Petitioner. Once it is established that the cheque was drawn on the account maintained by the drawer and the same is dishonoured, it is for the drawer to establish that there was no privity of contract between himself and the drawee. Except denying the liability and contending that the cheque in question was issued to one Kulandaivelu and the same has been misused by the respondent, no other materials, whatsoever, is available on record.

6.Once the issuance of the cheque has been established and other ingredients for the offence has been made out, statutory presumption available under the Negotiable Instruments Act,

1881, will come into play against the accused and the burden lies on him to bring some materials to dislodge legal presumption.

7. There must be some materials in the nature of preponderance of probability, and on a perusal of the entire case and records, this Court does not find any circumstances which gives interference or suggestion to dislodge legal presumption. Hence, this Court does not find any infirmity or illegality in the order passed by the Trial Court as well as the Courts below.

8. However, considering the nature of transactions of Rs.50,000/-, this Court is of the view that the sentence of one year simple imprisonment is excessive. Accordingly, the period of sentence is modified from one year to three months of simple imprisonment and fine of Rs.2,000/- in default to undergo simple imprisonment for one month. With the above modification this revision petition is dismissed and the Trial Court shall take appropriate steps to secure the accused to serve the remaining period of sentence.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To.

1. Additional Sessions Judge
Fast Track Court-I, Erode

2. The Judicial Magistrate No.1, Erode
(He is requested to serve copy of the
order on the accused 2 copies)

3. The Superintendent,
Central Prison, Coimbatore

Copy to: The Chief Judicial Magistrate, Erode

sm:6.3.2018

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