

Bail Slip

The petitioner/Accused was released on bail and in by the order dt.14.09.2011 made in MP.3/2011 in CrI.Rc.No.1190 of 2011 on the file of this Hon'ble High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR
CrI.R.C.No.1190 of 2011

S.Ganesan

... Petitioner

Vs

S.Murugan

... Respondent

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. against the judgment dated 05.07.2011 made in C.A.No.188 of 2010, on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Salem in dismissing the appeal against the judgement dated 19.11.2010 made in S.T.C.No.118 of 2010 on the file of the Judicial Magistrate No.II, Salem convicting the petitioner for the offence under section 138 of the Negotiable Instruments Act and sentencing to undergo simple imprisonment for one year and to pay fine of Rs.5000/- in default to undergo simple imprisonment for three months.

For Petitioner : Mr.J.Franklin

For Respondent : Ms.Anitha

for Mr.Selvathirumurugan

O R D E R

This revision has been filed against the judgment dated 05.07.2011 made in C.A.No.188 of 2010, on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Salem in dismissing the appeal against the judgement dated 19.11.2010 made in S.T.C.No.118 of 2010 on the file of the Judicial Magistrate No.II, Salem convicting the petitioner for the offence under section 138 of the Negotiable Instruments Act and sentencing to undergo simple imprisonment for one year and to pay fine of Rs.5000/- in default to undergo simple imprisonment for three months.

2. The revision petitioner had borrowed a sum of Rs.3,00,000/- as a loan from the respondent agreeing to repay the amount along with interest at the rate of 1% and issued Ex.P.1 cheque dated 09.11.2009 drawn on UTI Bank. When the above cheque was presented for encashment by the respondent, the

same was dishonoured for the reason 'account closed' and immediately, the respondent issued a legal notice on 16.11.2009 which was received by the revision petitioner and thereafter, the respondent has lodged the complaint. It is the further case of the respondent that besides the cheque, the accused also executed a promissory note dated 10.12.2008 for the above amount.

3. The main contention of the revision petitioner is that the evidence of P.W.1 itself clearly proves that there is no privity of contract between the parties and therefore, advancing of such a huge amount of Rs.3 lakhs and execution of promissory note and issuance of cheque is highly improbable. P.W.1 evidence itself is sufficient to discharge legal presumption. Hence, prayed for allowing this revision.

4. The learned counsel for the respondent contended that the evidence of P.W.1 is not disputed in its entirety. Merely some admission obtained from a rustic villager in his cross examination, that itself is not enough to disbelieve the case of the respondent. Hence, submitted that the trial Court as well as the first appellate Court properly appreciated the evidence and arrived at a just conclusion and there is no infirmity or illegality in the judgment of the Courts below which needs interference and hence, prayed for dismissal.

5. In the light of the above submissions, a perusal of the materials available on record would show that the respondent has filed a complaint under section 138 of the Negotiable Instruments Act on the ground that the accused/revision petitioner had borrowed a sum of Rs.3,00,000/- as a loan agreeing to pay interest at the rate of 1% and issued Ex.P.1 cheque dated 09.11.2009 drawn on UTI Bank. When the above cheque was presented for encashment by the respondent, the same was dishonoured for the reason 'account closed'. Immediately, the respondent issued a legal notice on 16.11.2009, which was received by the revision petitioner. Thereafter, the respondent has lodged the complaint. It is the further case of the respondent that besides the cheque, the accused also executed a promissory note dated 10.12.2008 for the above amount.

6. On the side of the respondent P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.5 were marked. No oral or documentary evidence was adduced on the side of the revision petitioner.

7. A perusal of the evidence of P.W.1 and P.W.2, it is seen that P.W.1 has studied up to III standard as per his evidence. It is the specific case of P.W.1 that the accused besides executing the promissory note dated 10.12.2008 in favour of the respondent, he also handed over a cheque dated 09.11.2009. In

the entire cross examination of P.W.1, the execution of promissory note and issuance of cheque is not denied by the revision petitioner. The only suggestion put to the witness to the effect that the cheque and promissory note came into possession of the revision petitioner in some other manner. Except that, no circumstances, whatsoever, has been brought out in the cross examination of P.W.1 as to how the documents, namely the cheque and promissory note came into possession of P.W.1. It is not the case of the revision petitioner that the signature found in the promissory note or the cheque is not that of his. When the execution of the documents are not denied, it is for the revision petitioner to establish that how those documents came in to possession of P.W.1. Therefore, this Court is of the view that the burden is not at all discharged by the revision petitioner.

8. Admittedly, the cheque was presented for encashment and the same was dishonoured for the reasons 'account closed' and necessary statutory notice is also sent within the time. Thereafter, a complaint has been lodged. Hence, the ingredients of the offence under section 138 of the Negotiable Instruments Act is made out. Therefore, the statutory presumption available under section 138 and 139 of the Negotiable Instruments Act would come into operation. Then, it is for the accused to dislodge the legal presumption by bringing out the probabilities. Merely because the complainant did not know the family background of the accused as admitted in the cross examination, that itself cannot be a ground to presume that there is no privity of contract between the parties. When the admitted documents executed by the revision petitioner are not denied in the cross examination, this Court is of the view that the admission of the illiterate witness in the cross examination cannot be taken advantage by the revision petitioner. Hence, this Court does not find infirmity or illegality in the Judgment of the trial Court and the first appellate Court and the revision lacks merits and is liable to be dismissed.

9. In the result, the Criminal Revision is partly allowed and the conviction of the revision petitioner under Section 138 of the Negotiable Instruments Act is confirmed and the sentence is modified to simple imprisonment for 6 months. The period of sentence already undergone by the revision petitioner, if any, is directed to be set off under Section 428 Cr.P.C.

vrc

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

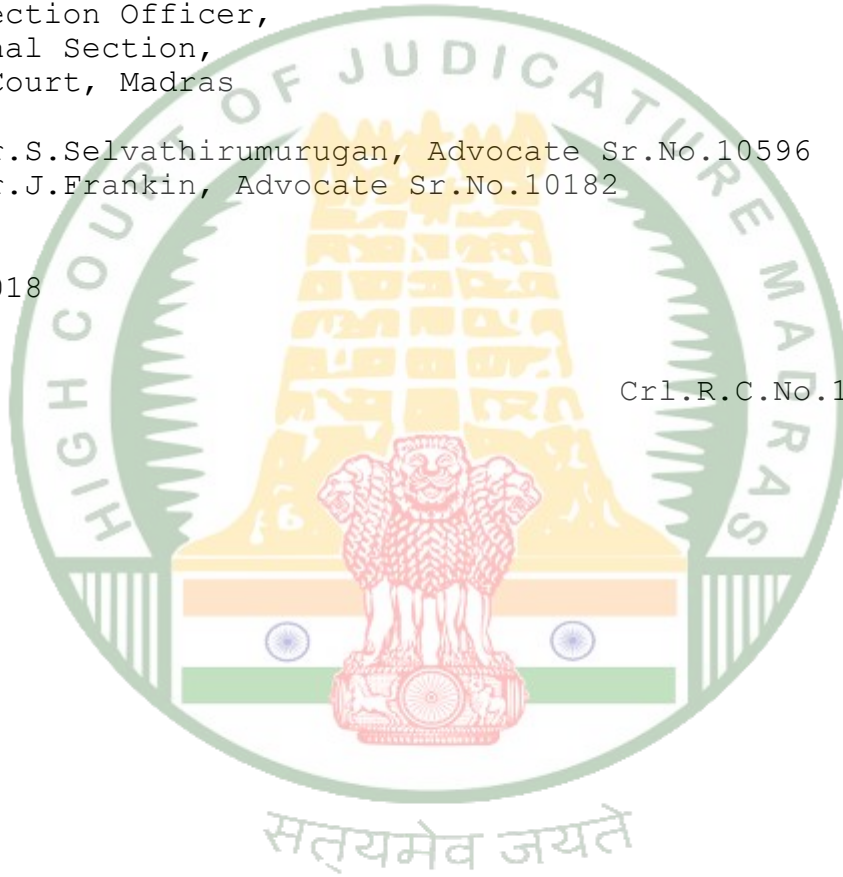
To

1. The Additional District and Sessions Judge,
(Fast Track Court No.II)
Salem.
2. The Judicial Magistrate No.II,
Salem.
3. Do-Thro The Chief Judicial Magistrate, Salem
4. The Section Officer,
Criminal Section,
High Court, Madras

+lcc to Mr.S.Selvathirumurugan, Advocate Sr.No.10596
+lcc to Mr.J.Frankin, Advocate Sr.No.10182

AK(CO)
sm:12.3.2018

Cr1.R.C.No.1190 of 2011



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