

Bail Slip.

The Appellant/Accused namely R. Srikanth s/o Radhakrishnan, was released on bail vide order dated 19.09.2011 in M.P.1/2011 in CrI.R.C. 1249/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 28.04.2018

ORDERS PRONOUNCED ON : 26.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.R.C.No.1249 of 2011

R.Srikanth ... Petitioner/Appellant/Accused

versus

K.Ganapathy ... Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 14.12.2010 made in CrI.Appeal No.28 of 2007 on the file of the Court of Sessions Judge, Nagapattinam in confirming the judgment dated 16.02.2007 made in S.T.C.No.1850 of 2004 on the file of the learned Judicial Magistrate, Sirkali and set aside the same and allow the above Criminal Revision Petition.

For Petitioner : Mr.S.Vadivel Murugan

For Respondent : Mr.S.Sounthar

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O R D E R

This Revision has been preferred against the judgment rendered by the Court of Sessions, Nagapattinam in C.A.No.28 of 2007 dated 14.12.2010. The said Criminal Appeal has been filed by the present revision petitioner praying to set aside the conviction and sentence awarded by the learned Judicial Magistrate, Sirkali in S.T.C.No.1850 of 2004 dated 16.02.2007.

2. The gist of the prosecution case is as follows:

2.1. The petitioner and the respondent [P.W.1 / Ganapathy] are residing in the same Village. The respondent filed a private complaint before the learned Judicial Magistrate, Sirkali, in which, he alleges that he has advanced a sum of Rs.1,75,000/- to the petitioner on 13.05.2004, for which, the petitioner issued a cheque [Ex.P.1] dated 02.06.2004 for the same sum. Thereafter, when the cheque was presented for encashment on 02.06.2004, the same was dishonoured as "insufficient funds". So, the statutory notice was issued by the respondent under Ex.P.2, which was replied under Ex.P.3 and the dishonoured memos were marked as Ex.P.5 and Ex.P.6. In spite of knowing the fact that there was no sufficient funds in his account, the petitioner issued a cheque. P.W.2 and P.W.3 are the Bank Officials, who deposed about the presentation of the cheque and with regard to the dishonour of cheque.

2.2. After examining 3 witnesses on the side of the respondent, the present petitioner was examined as D.W.1 and his father examined on the side of the defence as D.W.2. They exhibited 10 documents in order to show the loan transaction between one Natarajan and D.W.2, who is the father of the revision petitioner. At the end of the trial, the learned Judicial Magistrate, Sirkali, came to the conclusion that the revision petitioner found guilty for the offence under Section 138 of the Negotiable Instruments Act and awarded conviction and sentence to undergo six months Simple Imprisonment and to pay Rs.1,75,000/- as compensation. As against the said conviction, the petitioner filed the Criminal Appeal [Crl.A.No.28 of 2007] before the Court of Sessions, Nagapattinam. After elaborate enquiry, on 14.12.2010, the learned Sessions Judge, Nagapattinam, dismissed the Appeal and confirmed the sentence awarded by the learned Magistrate. Now, in order to check the correctness of the above concurrent judgments, the petitioner filed the present revision before this Court.

3. It is an admitted fact that the cheque in question dated 02.06.2004 was signed by the revision petitioner. Further, in the Trial Court as well as in the Appellate Court, the revision petitioner has not challenged the correctness in respect of limitation contemplated under Section 138 of the Negotiable Instruments Act in filing the complaint. So, those aspects need not be discussed again for deciding this revision. In the reply notice sent by the revision petitioner, it was mentioned that the cheque alleged have been issued in favour of the respondent was actually given to one Natarajan as a security for the loan availed by D.W.2. In order to prove the said

contention, in the Trial Court the revision petitioner and his father were examined as D.W.1 and D.W.2. Since the signature found in the cheque was admitted by the petitioner Section 139 of the Negotiable Instruments Act comes to play and it is his duty to establish that the cheque alleged to have been issued in favour of the respondent has not been issued in order to discharge the legally enforceable debt.

4. The documents exhibited on the side of the respondent as Ex.R.1 to Ex.R.10 and the evidences given by them are clearly established that one Natarajan and D.W.2 are having the loan transaction. In this situation, it was contended by the petitioner that the cheque has been issued at the time when D.W.2 received the loan from Natarajan, moreover after receiving the statutory notice from the respondent, the revision petitioner sent reply after stating the entire transaction as stated now through the evidence.

5. However, during the time of cross-examination D.W.2 stated that he has having separate account in State Bank of India. Further, he stated that he only maintained the accounts in his house. At the same time, the petitioner at the time of giving evidence as D.W.1 deposed that till now he is residing with his father. In the said circumstances, since the father of the D.W.1 had a separate account, it is not necessary for the petitioner for issuing the cheque on behalf of his father.

6. Moreover, D.W.2 admitted in his cross-examination that the said Natarajan has laid 4 or 5 cases for the offence under Section 138 of the Negotiable Instruments Act. In the said circumstances if really the cheque pertaining to this case is handed over to Natarajan, nothing prevented him from lodging the complaint directly against the petitioner. Further, except the oral evidence, no other evidences are put forth by the defence to establish that the respondent herein is the brother of Natarajan. According to the evidence given by D.W.2 in 2003 itself he gave Power of Attorney for the land in which he had not having any full right. The said attitude of the D.W.2 shows that he is capable to say anything for his personal benefit. Accordingly, as per the discussion supra, this Court is not in a position to hold that the contention raised by the petitioner is a true one, thereby, this Court came to the conclusion that the cheque pertaining to this case was issued by the petitioner only in order to discharge the loan availed by him.

7. In the Trial Court as well as in the First Appellate Court, the same view had taken and awarded conviction. So, the conviction and sentence awarded by the First Appellate Court is confirmed. In the result, this Criminal Revision is dismissed. The conviction and sentence passed by both the Courts below are confirmed. The Trial Court is directed to take steps to secure the custody of the revision petitioner/accused for undergoing the remaining period of sentence.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge,
Nagapattinam.
 2. Do Thro The Principal Sessions Judge
Nagapattinam.
 3. The Judicial Magistrate,
Sirkali.
 4. The Chief Judicial Magistrate
Nagapattinam.
 5. The Public Prosecutor,
High Court, Madras.
 6. The Section officer
Criminal Section,
High Court, Madras.
- +1 CC to Mr.S. Vadivel, Advocate sr 40762.

Cr1.R.C.No.1249 of 2011

PVS (CO)
SP(30/07/2018)