Bail Slip

The Petitioner/Accused namely P.K.Narayanan, S/o.Krishnan (Accused in C.C.NO.936/2006 on the file of the XIII Metropolitan Magistrate, Chennai dated 18/03/2010)was directed to be released on bail as per the order of this court dated 04.11.2011 in Crl.Mp.1/2011 in Crl.R.C.No.1480/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1480 of 2011

P.K. Narayanan ... Petitioner/Accused

Versus

Lakshman Perumal ... Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the entire records of Judgment and order dated 20.09.2011 in C.A. No.47 of 2010 passed by the Learned VII Additional Sessions Judge, Chennai wherein he confirming the Judgment and Order dated 18.03.2010 in C.C. No.936 of 2006 passed by the Learned XIII Metropolitan Magistrate Court, Chennai and set aside the order in C.A. No.47 of 2010 passed by the VII Additional Sessions Court, Chennai.

For Petitioner : Mr. N. Iyyakannu
For Respondent : No appearance

O R D E R

The convicted respondent is the appellant herein.

2. The respondent herein filed the complaint in C.C.No.936 of 2006 alleging the commission of offence under Section 138 of Negotiable Instruments Act, 1881 for dishonouring cheque to the tune of sum of Rs.25,000/- and after following the legal formalities the complaint has been taken on file in C.C. No.936 of 2006.

3. During the trial, the respondent herein examined himself as PW1 and Ex.P1 to P4 were marked. During the cross examination, P.W1, on behalf of the accused Ex.D1 to D5 were marked. Both the Courts below concurrently held that the appellant herein has committed the offence punishable under

Section 138 of the Negotiable Instruments Act,1881 for dishonour of cheque, for the reason "Account closed" and sentenced to undergo six months simple imprisonment and to pay a sum of Rs.25,000/- as compensation to the complainant/ respondent herein.

4. The learned counsel for the petitioner submitted that the respondent herein has been arrested for levying exorbitant interest under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and to prove the same Ex.D1, paper publication was marked. The respondent was conducting a Finance company, in which, the petitioner availed a sum of Rs.10,000/- as 'Thandal' and the Courts below without considering the fact that entire amount had been paid by the petitioner herein, which were proved by means of Ex.D2 and Ex.D3. The certificate of the proceedings of the earlier case, in which, the respondent was arrested and registered FIR and charge sheet were marked as Ex.D4 and Ex.D5.

5. The suggestive case of the complainant, who is the respondent in private complaint, during the cross examination PW1 was that of only in respect of Rs.10,000/-. As a 'Thandal', availed, the loan amount from P.W.1, which was duly repaid as reflected in the pass book Ex.D3 and after payment of the amount on the demand of interest amount the petitioner herein issued a blank cheque, which is now been filled up and preferred a false case.

6. The learned counsel for the petitioner drawn my attentions to the cross examination of P.W1, wherein the P.W1 has categorically admitted that the petitioner / accused availed loan of Rs.10,000/- form the respondent / complainant, under the Thandal Scheme and at the time of giving amount, a promissory note and a blank cheque was executed by the petitioner herein and the respondent denied the averments made by the petitioner herein that he has falsely filed the present case against him by using the blank cheque given by the petitioner at the time of borrowal.

7. In view of the specific admission made by the P.W.1, during the cross examination, i am of the considered view that the suggestive case of defence put forth by the petitioner is probable,but the both Courts below have not considered the admission, which is the best piece of evidence to probablise the suggestive case of the defense and hence, I am of the considered view the cheque was not drawn for legally enforceable debt. It is issued that the petitioner before the trial court has also arrested and remanded for levying exorbitant interest as it could be seen from the Ex.D4 and Ex.D5.

8. Thus on entirety of circumstance, I am of the considered view that the contention of the learned counsel for the petitioner would submit that there is no pre-existing legally enforceable debt, the cheque in issue is found to be suspicion and in view of the admission on payment PW1 during the cross examination, which probablised the suggestive case and hence, this Criminal Revision is allowed and the conviction and sentence passed by the learned XIII Metropolitan Magistrate, Egmore, Chennai is set aside and directed the Court below to refund the fine amount if any paid by the petitioner herein.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

klt

1.The VII Additional Sessions Judge,
Chennai.

2.The Principal Sessions Judge, Chennai.

3.The XIII Metropolitan Magistrate,
Egmore, Chennai.

4.do The Chief Metropolitan Magistrate,
Egmore, Chennai.

5.The Section Offcer,
Criminal Section Records,
High Court, Madras(2 copies)

Crl.R.C.No.1480 of 2011

br(co)
nr 03/10/2018