



Bail Slip

The Petitioner/Accused namely (A1) 1.Gowrishankar S/o V.Ramalingam, (A2)R.Thangaraj S/o V.Ramalingam, (A3) R. Satheesh Kumar S/o V.Ramalingam were directed to be released on bail by the order of this court dated 05.01.2011 and made in CrI.M.P. No. 2/11 in CrI.R.C. No. 36/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2018

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.R.C.No.36 of 2011

1.Gowrishankar
2.R.Thangaraj
3.R.Sateeshkumar

..Petitioners/Accused 1 to 3

versus

N.Muralidharan

.. Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records in so far relates to order passed by Additional District and Sessions Court/FTC-II, Salem, Salem District in C.A.No.55/2009, dated 22.10.2010 whereby confirming the order passed in C.C.No.184/2008, dated 29.06.2009 on the file of Judicial Magistrate-V, Salem, Salem District and set aside the same.

For Petitioners : Mr.C.Prakasam

For Respondent : Mr.R.Asokan

O R D E R

The revision petitioners are the accused nos.1 to 3 in C.C.No.184 of 2008 on the file of the learned Judicial Magistrate No.V, Salem. In the said Court, the respondent in this revision petition had filed a private complaint against these petitioners under Section 138 of the Negotiable Instruments Act.



2. It is alleged that the revision petitioners on 06.12.2006 borrowed a sum of Rs.2,50,000/- from the respondent and in order to discharge the said loan, they issued a cheque drawn on Karnataka Bank Limited, Salem. Further, the petitioners were also borrowed another sum of Rs.2,50,000/- on 13.12.2006, for which, they executed a promissory note agreeing to repay the same along with interest at the rate of 24% per annum. Subsequently, the petitioners paid a sum of Rs.22,000/- towards interest. Thereafter, neither the loan amount nor the interest have not been paid by the petitioners.

3. However, on 15.10.2007, the petitioners had issued two cheques in favour of the respondent [one cheque for Rs.5,00,000/- dated 01.12.2007 drawn on UCO Bank, Salem, towards the principal amount and another one cheque for Rs.78,000/- dated 06.12.2007 drawn on UCO Bank, Salem, towards interest]. Those cheques were presented for collection but they were returned as "funds insufficient". So, as per the provision of the Negotiable Instruments Act, statutory notice was issued to the revision petitioners. The petitioners 1 and 2 had refused to receive the notice but the third petitioner received the notice. Subsequent to that notice, the petitioners did not pay the amount.

4. In the Trial Court, after examining the respondent as P.W.1 and after marking 9 documents as Ex.P.1 to Ex.P.9, the learned Judicial Magistrate No.V, Salem, after considering the oral and documentary evidence found the petitioners guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and awarded conviction and sentenced to undergo one year Rigorous Imprisonment with a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment. As against the said conviction, the petitioners preferred an Appeal [in CrI.A.No.55 of 2009] before the learned Additional District and Sessions Judge [Fast Track Court No.II], Salem [in C.C.No.184 of 2008].

5. After elaborate enquiry, on 22.10.2010, the learned Additional District and Sessions Judge [Fast Track Court No.II], Salem, dismissed the Appeal and confirmed the sentence awarded by the learned Magistrate. Before that during the time when the appeal is pending with that Court, the matter was referred to the Lok Adalat for amicable settlement. After negotiation, a settlement was arrived, in which, the revision petitioners were agreed to pay the entire cheque amount on installment basis. Subsequent to that, the petitioners had not followed the settlement arrived in the Lok Adalat, thereby, the learned Additional District and Sessions Judge, dismissed the appeal and



confirmed the sentence awarded by the learned Magistrate.

6. Aggrieved by the judgment passed by the learned Additional District and Sessions Judge [Fast Track Court No.II], Salem, the petitioners have filed the present Criminal Revision before this Court to check the correctness of the said concurrent judgments.

7. During the pendency of this revision, the learned counsels appearing on either side made a submission before this Court that a settlement was arrived for Rs.2,25,000/- and sought adjournment for effecting the payment. After giving sufficient adjournments, the petitioners and the respondent have not recorded the settlement in this revision petition. In spite of repeated adjournments, they were not appeared before this Court for disposing this Revision. In the said circumstances, except to pass orders on merits, this Court is not having any alternative measures for disposing this Revision.

8. In the Trial Court, the Cheques, returned memos, letter of the petitioners/appellants, statutory notice, returned covers, acknowledgement card, reply, have been marked as Ex.P.1 to Ex.P.9. Further, during the time of giving evidence as P.W.1, the respondent clearly spoke about the loan transaction and issuance of cheque.

9. On the other hand, in the Trial Court, the revision petitioners had not disputed the issuance of cheque. Moreover, on going through the dates, on which, the cheque was returned, statutory notice was issued, all are happened as per the time stipulated under Section 142 of the Negotiable Instruments Act.

10. Moreover, during the time of trial in the Trial Court, nobody was examined on the side of the petitioners to prove that the alleged issuance of the cheque had not issued in order to discharge the loan availed by them. Section 139 of the Negotiable Instruments Act deals that after proving the initial burden, the burden is shifted to other side for putting the probable defence that the alleged cheque has not been issued for discharging the loan. But, in this case, in order to prove their case on the side of the petitioners, no witness has been examined and no documents were exhibited. It shows that the case of the respondent is proved in the Trial Court. So, this Court come to the conclusion that no manifested error has occurred in the findings arrived by the both Courts.



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11. Accordingly, in the light of the above discussion stated supra, this Court came to the conclusion that the judgment rendered by the learned Additional District and Sessions Judge [Fast Track Court No.II], Salem in Crl.A.No.55 of 2009, dated 22.10.2010, does not warrant any interference.

12. 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 petitioners/accused for undergoing the remaining period of sentence.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sri

To

- 1.The Judicial Magistrate No.V,
Salem, Salem District.
2. The Judicial Magistrate
Salem (for information)
- 3.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.36 of 2011

VGII(CO)
SP(11/05/2018)