

Bail Slip

The Accused/Petitioner namely U.K. Thiagarajan, S/o. Krishnamoorthy, was released on Bail as per the order of this court dated 1.4.2016 in CrI.MP.No.3137 of 2016 in CrI.R.C.No.474/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2018

DELIVERED ON: 09.10.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CrI.R.C.No.474 of 2016

U.K.Thiagarajan ... Petitioner/Accused

vs.

R.Manikanda Kurup Respondent/Complainant

Criminal Revision Case is filed under sections 397 and 401 Cr.P.C. to set aside the order dated 9.2.2016 in C.A.No.2 of 2013 on the file the VI Additional Sessions Judge, Chennai in C.C.No.6251/2004 at Fast-Track Magistrate Level-I, Egmore, Chennai.

For petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.N.Ramesh

For respondent : Mr.M.L.Joseph
for M/s.Chennai Law Associates

ORDER

This Criminal Revision Case has been filed by the petitioner challenging the order dated 9.2.2016 passed in Criminal Appeal No.2 of 2013 by the learned VI Additional Sessions Judge, Chennai.

2. The facts in a nutshell are as under: The petitioner is the accused and the respondent is the complainant. As can be deciphered from the order under challenge, the petitioner and the respondent initially started "Integrated Consultants and Foundation Engineers" on 19.10.1988 with equal shares. Thereafter, the same parties agreed to start a limited company and, accordingly, formed a limited company in the name and

style of "Integrated Pile Foundations (Madras) Pvt. Ltd." on 1.10.1991.

3. Disputes arose between the parties and ultimately, the respondent submitted his resignation. It is stated that the said resignation was forwarded to the Registrar of Companies on 15.11.2001. The respondent complainant asked for settlement as well as materials that he brought in while floating the company, which he valued in all at Rs.60,00,000/- in the year 2000.

4. It is stated that in response to the same the petitioner issued two cheques for Rs.40,00,000/- on 8.12.2003 and the same were returned by the bank with an endorsement "insufficient funds" on 19.12.2003. Thereafter, complainant issued a legal notice to the accused on 13.1.2004, which was received by the accused on 17.1.2004 and a reply was sent on 29.1.2005. Under such circumstances, the respondent filed a private complaint against the accused under Section 138 of the Negotiable Instruments Act, 1881.

5. The learned Metropolitan Magistrate, Fast Track-I, Egmore, Chennai, by judgment dated 11.12.2012, found the petitioner guilty under Section 138 of the said Act and convicted him for the said offence under Section 255(2) of the Criminal Procedure Code and the accused was sentenced to undergo simple imprisonment for one year and was also directed to pay compensation of Rs.40,00,000/- to the complainant under Section 357(3) of the Cr.P.C within one month, failing which it was directed that he should undergo simple imprisonment for a period of three months.

6. Assailing the said order, the petitioner filed Criminal Appeal No.2 of 2013 and the learned VI Additional Sessions Judge, Chennai, by judgment dated 9.2.2016, confirmed the conviction and sentence imposed by the trial Court.

7. Calling in question the said order, the present criminal revision case is filed.

8. It is the pivotal contention of the learned counsel for the petitioner that the respondent, being a partner and co-director, had access to all documents, including signed cheques of the petitioner, which he had misused and filed a false complaint against the petitioner.

9. He further contended that the complaint was filed by the respondent with three days delay and there was no proper explanation for the said delay, but the trial Court condoned the delay stating that the limitation point was not challenged.

10. He also contended that as per Section 118 and 139 of the Negotiable Instruments Act the standard of proof is not by proof beyond reasonable doubt, and inasmuch as the petitioner had

adduced sufficient oral and documentary evidence to rebut the case of the respondent, the Courts below failed to consider the same, more particularly, when the respondent had not proved the legal liability under the cheque.

11. He further contended that when the claim made by the respondent is relating to the liability in a company and/or partnership firm, the petitioner should have issued the cheques from the company and/or partnership firm and the fact that the cheques in question were from the personal account of the petitioner itself shows that the version of the respondent is unbelievable, more so when the same were issued after years of resignation of the complainant.

12. Per contra, the learned counsel appearing on behalf of the respondent complainant reiterated the reasons that weighed with the Courts below and prayed for dismissal of this revision.

13. I heard Mr.N.R.Elango, learned Senior Counsel representing for M/s.N.Ramesh, learned counsel for the petitioner and Mr.M.L.Joseph for M/s.Chennai Law Associates learned counsel for the respondent and perused the documents available on record.

14. Admittedly, in the case on hand, legal notice was issued by the complainant on 13.1.2004 and he had sent his reply on 29.1.2004. Thereafter, the respondent complainant filed a private complaint on 4.3.2004. There is a delay of three days. In the order of the Appellate Court, it has been categorically stated that the complainant had filed the complaint with delay and the same has been condoned by the trial court stating that the delay is well explained and bona fide on oral examination made on oath.

15. From a reading of the above said finding, it is clear that such condonation of delay was done by the trial Court without issuing any notice to the petitioner/accused. When the complainant is claiming that the petitioner is due and payable a sum to the tune of Rs.60 Lakhs, it is not known as to how he was not diligent in filing the private complaint within the statutory period. That apart, no explanation whatsoever has been adduced by the respondent complainant for the delay.

16. Only if the petitioner had been issued a notice before condonation, he would have rebutted. The finding of the Appellate Court that "if the accused really suffered due to condonation of delay made, he would have preferred revision, but instead he allowed the trial to go ahead by submitting to it and now, at this stage he cannot take up a technical plea to escape from the liability to pay" is not tenable.

17. A perusal of the judgment of the learned Magistrate, it is seen that there is not a whisper in the order as to on what

basis the learned Magistrate came to the conclusion that there is a sufficient cause to condone the delay. The Appellate Court, however, added that the issue of limitation as contemplated and provided by the proviso added to section 142 of Negotiable Instrument Act is essentially a matter between the court and the complainant. The trial Court has passed a mechanical order without stating as to what was the material before it on the basis of which it derived satisfaction to condone the delay in filing the complaint.

18. The satisfaction contemplated by the proviso is not an empty formality but requires an application of mind spelling out the need to direct the condonation of delay. The material on record has to be scanned, assessed and analyzed so as to find out whether the complainant has, or has not, a sufficient cause for not knocking at the portals of the Court within the period stipulated under section 142 Negotiable Instruments Act, which has not been done in the instant case. Therefore, it can be said in unambiguous terms that the learned Magistrate has failed to pass the order in consonance with the mandate of the proviso added to Section 142 of Negotiable Instruments Act. Admittedly, in this case, the complaint has been taken on file straightway, though there was a delay of three days in filing the complaint without following the procedure prescribed under Section 142(b) of the Negotiable Instruments Act.

19. When an application for condonation of delay is filed, notice obviously will have to be issued to the other side before the order is passed either allowing the application or declining the same. Undoubtedly, a right accrues in favour of the accused when there is a delay in lodging the complaint, but in the case on hand, the petitioner lost such valuable right. It is true that it is only a matter between the complainant and the Court, but it is a question of deciding the valuable right of the accused, who cannot be shut out from such proceedings. Though the accused is out of picture till the complaint is taken cognizance of by the Court, an indefeasible right of the accused is found incorporated under Section 142(b) of the Negotiable Instruments Act. Therefore, the court by exercising its discretion under the proviso to the aforesaid provision of law is empowered to make a dent in such right of the accused by extending the period of limitation on satisfying itself of the reasons assigned by the complainant. Therefore, the complainant should file an affidavit, setting forth the reasons for the delay and the discretion of the court to condone such a delay can be exercised only after affording an opportunity to the accused to contest the reasons assigned by the complainant. But, in the instant case, the trial Court before taking cognizance, has not given an opportunity for the accused to contest the application, which is opposed to principles of natural justice.

20. The next plea of the petitioner is regarding the cheque issued from his personal account with regard to the alleged due to the respondent from the partnership firm and/or limited company.

21. In this regard, it is apposite to refer to the evidence of D.W.2, Suresh, who was working as the Manager in Integrated Pile Foundation Limited. He deposed that in the nature of business the signed blank cheques were given to deal with the payments of the day to day process by the accused. To fortify the same, DW2 produced a blank cheque (Ex.D2) signed by both the complainant and the accused. From the above said deposition, the Courts below merely took the stand that the signature of the accused in the cheque is not disputed by D.W.2. In fact, nothing has been stated by the respondent complainant with regard to his signature on the blank cheque. So necessarily a presumption can also be drawn to the effect that the practice of keeping blank signed cheques was prevalent.

22. That apart, there is no basis for arriving at a finding that the petitioner is due a sum of Rs.40,00,000/- to the respondent. Therefore, the plea of the petitioner that there was a practice of keeping blank signed cheques available in the office cannot be lightly disregarded. While accepting the formal parlance followed, the Appellate Court held that "if that is the formal parlance followed, it gives an inference as to the necessity of issuing signed personal cheques to the complainant, for the purpose of paying the firm's transportation charges, that too after the resignation of the complainant". This Court is unable to accept the said reasoning given by the Appellate Court. The plea of the petitioner that the complainant had due access to the signed blank cheques is not rebutted by the respondent complainant at any stage of the proceedings.

23. Even though as per Section 139 of the Negotiable Instruments Act, once a cheque is dishonoured, the burden shifts on to the accused to disprove that he does not owe the debt or liability, it cannot be denied that the initial and basic task of asserting the bare facts under which the liability to make payment of the cheque arose is upon the complainant as laid down by the Hon'ble Supreme Court in the case of M.S. Narayana Menon @ Mani vs. State of Kerela & Anr. reported in AIR 2006 SC 3366.

24. Unless and until the basis of existence of liability is set out by the complainant in the complaint and in the evidence, the Court would be loathe to raise a presumption regarding existence of a legally enforceable debt against the accused. A bald allegation that the accused who advanced the cheque was under an obligation to honour the same is unacceptable. The complainant is required to state before the Court that the cheque was received by him against some debt or liability. These facts have to be narrated and proved by way of admissible substantive evidence. If such allegations exist then of course,

the rebuttable burden would shift on to the accused to disprove existence of the liability. In the case at hand, all that was mentioned in the complaint was that the accused and the complainant had been partners and the complainant is entitled to equal share and that the disputed cheques were advanced for the repayment thereof. The accused denied his liability towards the disputed cheques.

25. In M.S. Narayana Menon case, supra, the Hon'ble Supreme Court has clearly expounded that when the accused denies the existence of liability even by a preponderance of probability, the burden of proving the facts essential to unfurl the necessary ingredients of the offence under Section 138 of the Negotiable Instruments Act and the existence of the liability would revert upon the complainant.

26. One more factor which needs mentioning here is that even as per the complainant he submitted his resignation on 10.10.1999, but the accused had forwarded it to the Registrar of Companies only on 15.11.2001. It is not known as why the respondent complainant remained silent till 8.12.2003, for more than four years without claiming any amount from the petitioner or without lodging any complaint before the appropriate authority.

In view of what has been narrated above, the revision is allowed setting aside the order dated 9.2.2016 passed in Criminal Appeal No.2 of 2013 by the learned VI Additional Sessions Judge, Chennai. No costs. Consequently, connect miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vs

To

1. The VI Additional Sessions Judge, Chennai.
2. The Metropolitan Magistrate, FTC No.1, Magistrate Level, Allikulam, Egmore, Chennai.
3. The Chief Metropolitan Magistrate Egmore, Chennai
(For information)

+1 cc to Mr. N. Ramesh, Advocate Sr.69610

+2 ccs to M/s. Chennai Law Associates, Advocate Sr.69639 & 69385

CrI.R.C.No. 474 of 2016

RSI (CO)

EU (02/11/2018)

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