

BAIL SLIP

The Appellant/Accused namely M.Sridhar, S/o.Munusamy, was directed to be released on bail vide order dated 28.04.2011 made in Crl.M.P.No. 1/2011 in Crl.RC.No. 678/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.678 of 2011

M.Sridhar ...Petitioner/Appellant/Accused

..Vs..

B.Krishnan ...Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records in C.A.No.27 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Erode and set aside the order dated 31.03.2011 confirming the conviction and the sentence passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in C.C.No.36 of 2008 by a judgment dated 25.01.2010.

For Petitioner : M/s.V.Bhavani

For Respondent : Mr.V.S.Kesavan

सत्यमेव जयते
O R D E R

The un-successful respondent/accused is the Revision Petitioner herein, who was convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and he was also directed to pay the compensation of Rs.2 lakhs being the cheque amount to the complainant.

2. Both the Courts below have concurrently come to the conclusion that the revision petitioner herein has executed a cheque for a sum of Rs.2,00,000/- to the private complainant and issued the cheque on 09.01.2008 and on deposit of the same, it returned with endorsement 'insufficient funds' and hence, after

following the procedures, he filed a complaint, which was numbered as C.C.No.36 of 2008.

3. Before the trial Court, the respondent/complainant examined himself as P.W.1 and documents Exhibits P.1 to P.5 were marked and on the defence side, the accused was examined as D.W.1 and Exhibit D1 was marked on his side.

4. In the trial Court, the suggestive case of the accused/revision petitioner is that he had initially money transaction with one Pattabi, with whom, he has deposited 3 cheques as a security for the payment. However, the same has been misused and hence, the present case has been filed. Further, during the cross-examination of P.W.1, it is elicited that the name, amount and words are written in 3 different inks in Ex.P1 and trying to say that the blank cheque has been filled up subsequently by the private complainant before the trial Court.

5. On consideration of both oral and documentary evidence, the trial Court has held that the revision petitioner admitted his signature in the cheque, and there is a presumption in favour of the private complainant, as he failed to rebut the presumption and he was convicted and sentenced under Section 138 of the Negotiable Instruments Act and accordingly, the trial Court laid the conviction and sentence as noted above and on appeal in C.A.No.27 of 2010, the Additional District Judge, Erode has confirmed the same and hence, the revision is filed by the accused.

6. The learned counsel for the petitioner would submit that the accused was working as a Tamil Teacher in Kollapatti Government School and he had borrowed the amount from one Pattabi and issued three blank cheques as a security for payment and afterwards, he was transferred from the Koonur to Pollachi, and the cheque has been misused and the private complainant is no way connected with the accused and furthermore, the learned counsel has drawn my attention to the answer elicited in the cross-examination of P.W.1 and the chief-examination of R.W.1.

7. The learned counsel for the petitioner would submit that as the revision petitioner who was third accused before the trial Court, has miserably failed to rebut the presumption that arose under Section 138 of Negotiable Instruments Act and made his submissions in respect of the findings rendered by the Courts below.

8. The point for determination is as to whether the order of conviction and sentence laid by the Courts below are sustainable in law?

9. After hearing the learned counsel for the petitioner and the respondent and after going through the evidence of P.W.1, it is found that the signature in the cheque was admitted by the accused/revision petitioner in the cross-examination. Though, it is elicited that the cheque contains three different inks, however, R.W.1 in the cross examination admitted the signature and hence, the trial Court has come to the conclusion that in view of the admission of signature in the cheque, the private complainant is entitled to legal presumption under Section 138 of Negotiable Instruments Act and held that it is upto the accused to rebut the presumption which was projected as if he has never issued the cheque to the private complainant.

10. However, in the cross-examination of R.W.1, he would say that there is no difference of opinion between himself and the said Pattabi with whom he is alleged to have gone forwarded the amount and executed the three blank cheques and in the absence of any presumption or misunderstanding between them, the non-examination of the said Pattabi before the trial Court to substantiate the case of the respondent/accused, is of no significance and the trial Court convicted the accused and adverse inference has been drawn. Furthermore, when it is the case of the revision petitioner that he has paid the entire amount, then he ought to have taken legal steps to recover the cheques which are said to have been issued as security.

11. In this view of the matter, both the Courts below have come to the conclusion that the revision petitioner/accused before the trial Court has failed to rebut the legal presumption and consequently held that he has committed the offence and he has been convicted by both the Courts below under Section 138 of the Negotiable Instruments Act, which do not warrant any interference by this Court.

12. Accordingly, this Criminal Revision Petition is dismissed. Since the accused is on bail, the trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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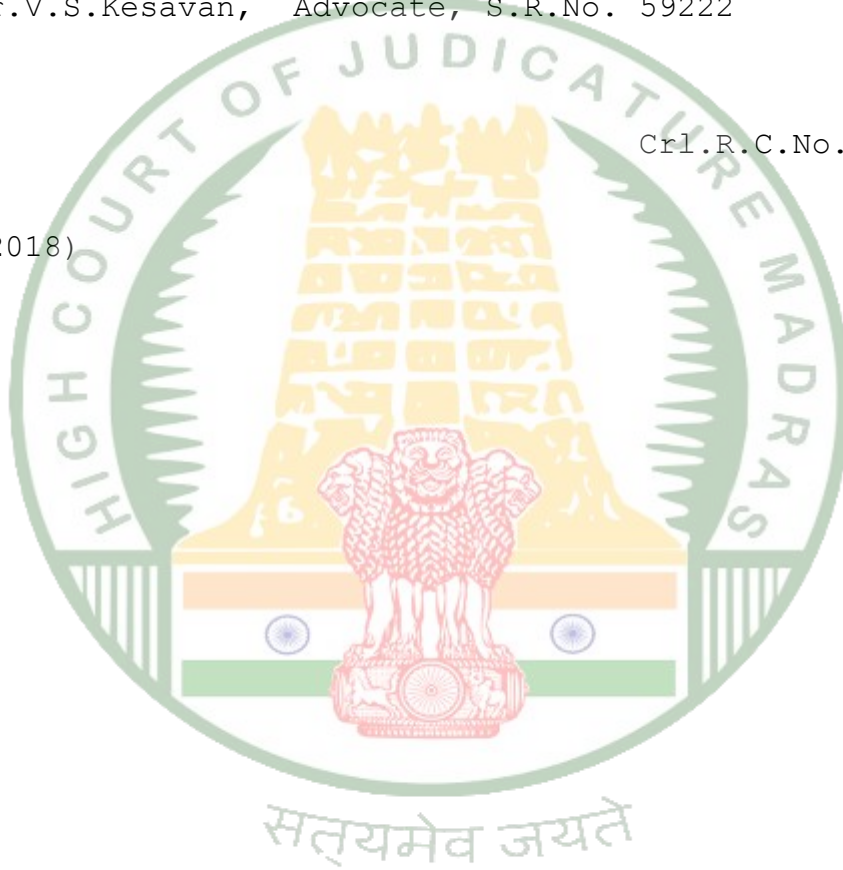
To

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Erode
2. The District Munsif cum Judicial Magistrate,
Kodumudi
3. The Chief Judicial Magistrate,
Erode.

+lcc to Mr.H.Rajasekar, Advocate, S.R.No. 59142
+lcc to Mr.V.S.Kesavan, Advocate, S.R.No. 59222

CrI.R.C.No.678 of 2011

RSI (CO)
GN(25/09/2018)



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