

Bail Slip

That the Appellant/Accused namely N. Saravanan S/o Nallaiya Goundar was released on bail as per the order of this court dated 29.06.2011 in M.P. No. 1 of 2011 in CrI.R.C.No.849 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

CrI.R.C.No.849 of 2011

N. Saravanan ... Revision Petitioner/Appellant/Accused

Vs

Sivakumar. ... Respondent/Respondent/complainant

Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C.to call for the records and set aside the conviction and sentence passed by the Additional District Sessions Judge, Namakkal (Fast Track Court, Namakkal) by judgement dated 21.4.2011 in C.A.No.100 of 2010 by modifying the sentence passed in the judgment dated 29.9.2010 in STC No.92 of 2010 on the file of the Judicial Magistrate No.II, Namakkal.

For Petitioner : Mr. B. Vasudevan

For Respondent : Ms. Premalath
for M/s.C.D.Johnson

सतयमेव जयते
O R D E R

This revision petition has been filed against the conviction and sentence passed by the learned Additional District Judge, Fast Track Court, Namakkal, modifying the conviction of the learned Judicial Magistrate No.II, Namakkal, from one year simple imprisonment to three months simple imprisonment under Section 138 of Negotiable Instruments Act.

- 1.The brief facts leading to file the revision petition is as follows:

2.(a) The revision petitioner/accused borrowed a sum of Rs.3,50,000/-from the respondent/complainant on 17.09.2009 and issued Ex.P.1 cheque dated 22.10.2009 drawn on Indusind Bank, Namakkal. When the above cheque was presented in the respondent bank for encashment, it was dishonoured for the reason "insufficient funds" under Ex.P.2 Return Memo. Therefore, the respondent/complainant issued statutory notice Ex.P.3 to the accused and the same was received by the revision petitioner/accused. Since the revision petitioner neither paid the cheque amount nor sent reply to the respondent, the respondent initiated the proceedings against the revision petitioner/accused under Section 138 of Negotiable Instruments Act.

3. The trial Court based on the material evidence, found the accused/revision petitioner guilty and imposed one year simple imprisonment. However, the appellate court modified the sentence from one year to three months. Aggrieved over the modified sentence of the appellate court, the accused/revision petitioner has filed the present revision for acquittal.

4. The revision petitioner has challenged the order of the trial Court on the ground that there is no proper appreciation of evidence and the respondent has not proved passing of consideration. There is no privity of contract between the revision petitioner and the respondent. The cheque was issued to one Mr.Saravanan, who is running a finance company in the name and style of Sindhu Financiers and the same has been misused by the respondent.

5. Heard both sides and perused the entire materials.

6. Ex.P.1 cheque, in fact, was drawn on Indusind Bank, Namakkal, where the revision petitioner/accused has bank account. This fact is not in dispute. It is also established that the above cheque when presented, was dishonoured for the reason insufficient funds. The revision petitioner/accused has also not disputed the receipt of legal notice, demanding the cheque amount. It is to be noted that once all the ingredients set out as per Section 138 of the Negotiable Instruments Act is proved, then automatically statutory presumption under Section 118 and 139 of Negotiable Instruments Act come into play. The presumption apply not only issuance of cheque but also passing of consideration, execution, time, etc., Of course, the above presumption can be rebutted by bringing upon some probabilities. The evidence need not be direct; it may be by way of circumstance or even may be by admission in the cross examination, etc.,

7. On perusal of the entire evidence, I am not able to accept any of the contention of the learned counsel for the revision petitioner to disbelieve respondent case. The contention of the revision petitioner is that he has issued the cheque to one financier by name Mr.Saravanan and the same was misused by the respondent and filed the present complaint is not all established. The revision petitioner has not put forth not even a single circumstance in support of his contention. Hence, this Court does not find any infirmity or illegality in the order passed by the learned Additional District Judge, Fast Track Court, Namakkal and the same is confirmed. The revision fails and the same is liable to be dismissed.

8. In view of the above, the revision petition is dismissed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ggs

To

1. The Judicial Magistrate No.II
Namakkal.
2. Do Thro The Chief Judicial Magistrate
Namakkal.
3. The Additional District Sessions Judge (FTC)
Namakkal.

+1 CC to Mr. Vasudevan, Advocate sr 18157.

Cr1.R.C.No.849 of 2011

MG(CO)
SP(04/06/2018)

WEB COPY