

Bail Slip

The Accused 1 viz, R. Singuraj @ Singaraj, F/o Ramaswamy, was directed to be released on bail as per order dated 30.06.2011 in Crl.M.P. No 1/11 in Crl.R.C.No.861 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2018

Coram

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.R.C.No.861 of 2011

R.Singuraj @ Singaraj

... Petitioner/Appellant

Vs.

K.Ganapathi

... Respondent/Respondent

PRAYER: This Criminal Revision Petition has been filed under Section 397 and 401 of Criminal Procedure Code as against the order passed by the learned Additional District & Session Judge - Fast Track Court - Namakkal, reducing the term of imprisonment in his Appeal in Crl. Appeal No.98 of 2010 by an order dated 27.05.2011, confirming the conviction u/s.138 of Negotiable Instrument Act passed by the learned Judicial Magistrate - II, Namakkal in S.T.C. No.413 of 2009 dated 21.09.2010 and reducing the sentence imposed on the petitioner to undergo SI for three months.

For Petitioner : Ms.Bhavani
for M/s.H.Rajasekar

For Respondents: Ms.N.Premalatha
for M/s.C.D.Johnson

ORDER

The Criminal Revision has been preferred by the revision petitioner as against the sentence and conviction u/s.138 of Negotiable Instruments Act, 1881 passed by the learned Judicial Magistrate - II, Namakkal in S.T.C. No.413 of 2009 dated 21.09.2010.

2.The case of the Revision Petitioner is as follows:

The respondent borrowed a sum of Rs.4,20,000/- from the Revision Petitioner on 27.04.2009 and issued a cheque dated 27.05.2009, drawn on State Bank of India, Coimbatore Branch. When the cheque was presented for encashment, the same was dishonoured by the banker with an endorsement (return memo) "insufficient funds". Immediately, the revision petitioner has sent a legal notice to the respondent and had filed a complaint against the respondent under Section 138 of Negotiable Instruments Act.

3.It is the contention of the revision petitioner before the Trial Court that he purchased eggs from one Mr.Natesan on credit, for which a blank cheque was issued in favour of the said Mr.Natesan as security deposit and thereafter, he had settled all his outstanding dues by depositing cash in Ganapathy Poultry Farm account maintained by Mr.Natesan as directed by Mr.Natesan. The Revision Petitioner further contended that there is no privity of contract between himself and the respondent and hence disputed the liability.

4.The Trial Court after considering the evidence and materials placed before the Court, found the Revision Petitioner guilty under Section 138 of the Negotiable Instruments Act, 1881, imposed the punishment to undergo one year simple imprisonment. Aggrieved by the above findings of the Lower Court, the revision petitioner had challenged the same before the Appellate Court. The Appellate Court while confirming the order of the Trial Court reduced the sentence imposed on the revision petitioner from one year to three months. As against which, the present Revision Petition has been filed.

5.Heard, the learned counsel on either side. On a perusal of the entire materials placed before this Court, this Court finds that the cheque in question was issued to the respondent by the Revision Petitioner, which has not been disputed by the Revision Petitioner and when the above cheque was presented for encashment, the same was dishonoured by the banker. Immediately, the respondent /complainant sent a legal notice to the Revision Petitioner, demanding the amount within a statutory period and also lodged a complaint. These facts are also not disputed by the Revision Petitioner. Once it is established that the cheque was drawn on the account maintained by the drawer and the same is dishonoured, it is for the drawer to establish that there was no privity of contract between himself and the drawee. Except denying the liability and contending that the cheque in question was issued to one Natesan and the same has been misused by the respondent, no other materials, whatsoever, is available on record.

6.Once the issuance of the cheque has been established and other ingredients for the offence has been made out, statutory presumption available under the Negotiable Instruments Act, 1881, will come into play against the accused and the burden lies on him to bring some materials to dislodge legal presumption.

7.There must be some materials in the nature of preponderance of probability, and on a perusal of the entire case and records, this Court does not find any circumstances which gives interference or suggestion to dislodge legal presumption. Hence, this Court does not find any infirmity or illegality in the order passed by the first Appellate Court and accordingly, this revision petition stands dismissed and the Trial Court shall take appropriate steps to secure the accused to serve the remaining period of sentence.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To.

1. The Additional District & Session Judge
Fast Track Court
Namakkal
2. The Judicial Magistrate - II
Namakkal
3. Do Thro The Chief Judicial Magistrate
Namakkal.
4. The Judicial Magistrate XI
Namkkal.
5. The Judicial Magistrate
Thiruchengode.
6. The Superintendent of Police
Namakkal District.
7. The Section officer
Criminal Section, High Court, Madras.

+1 CC to Mr.C.D. Johnson, Advocate sr 5161.

CRL.R.C.No.861 of 2011

SP(15/02/2018)