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Bail Slip.

The Appellant/Accused viz Govindaraj, S/o Devaraj was directed to be released on bail as per order dated 27.01.2011 in Crl.M.P.No.1/2011 in Crl.R.C.No.89/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.89 of 2011

Govindaraj ... Petitioner/Accused

..Vs..

M/s.Sri Ganesh Balaji Enterprises,
Rep.by its Special Power of Attorney,
Natarajan,
Having Office at,
No.D/7, Sri Krishna Complex (1st Floor),
By-Pass Road,
Vellore-632 004. ... Respondent/Complainant

Criminal Revision case filed under Section 397 and 401 of Crl.P.C. to call for the records on the file of the learned Additional District Judge, (Fast Track Court), Vellore, Vellore District in Crl.A.No.59/2010 dated 29.12.2010 and confirming the judgment passed in S.T.C.No.81/2006 on the file of the learned Judicial Magistrate No.II, Vellore, Vellore District dated 11.03.2010 and set aside the judgment dated 29.12.2010.

For Petitioner : Mr.E.Kannadasan
For Respondent : Mr.V.Madhavan

O R D E R

This Criminal Revision Petition is directed against the order made in Crl.A.No.59/2010 dated 29.12.2010, passed by the learned Additional District Judge [Fast Track Court], Vellore confirming the order of conviction and sentence passed by the learned Judicial Magistrate No.II, Vellore, wherein the petitioner was convicted for an offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo Simple Imprisonment for 3 months and fine of Rs.1000/- and in default to undergo 1 month Simple Imprisonment.

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2.The respondent filed a complaint against the petitioner on the ground that the petitioner borrowed a sum of Rs.2,00,000/- [Rupees Two Lakhs only] as loan on 06.12.2001 and towards the said loan, the petitioner issued two cheques each for a sum of Rs.1,00,000/- [Rupees One lakh Only] dated 22.02.2002, and these two cheques were presented for collection on 25.02.2002, and the same was returned unpaid due to insufficient funds. The Statutory Notice was issued by the respondent on 08.03.2002 calling upon the petitioner to pay the cheque amount. On receipt of the notice, the petitioner had given a reply notice dated 09.04.2002 denying the liability.

3.The respondent proceeded to file a Criminal Complaint against the petitioner for an alleged offence under Section 138 of the Negotiable Instruments Act. The trial Court on appreciation of the evidence placed before the Court found the petitioner guilty for the said offence and imposed a sentence mentioned supra. The petitioner aggrieved by the said order, filed an appeal in Crl.A.No.59/2010 before the Additional District Judge [FTC], Vellore, and the Appellate Court on appreciation of the materials, concurred with the order of the trial Court and confirmed the order of conviction and sentence passed against the petitioner. Aggrieved by the same, the present Criminal Revision has been filed.

4.The learned counsel for the petitioner would submit that both the Courts below who have dismissed the complaint on the preliminary ground that the Power Agent who filed the complaint on behalf of the respondent, did not possess the power on the date when the complaint was field and cognizance was taken. The learned counsel brought to the notice of the Court, the letter dated 26.02.2002 [Ex.D-5] wherein the petitioner through his counsel had informed the respondent Firm and its partner that all the loans that were taken by the petitioner from the respondent has been cleared and two blank cheques and three pronotes that were given as security was not returned back and based on these documents, the petitioner is being threatened to clear the dues. Therefore, the learned counsel would submit that even before the Statutory Notice dated 08.03.2002 [Ex.P-4] was issued by the respondent to the petitioner, the petitioner had clearly informed the respondent about the entire loan already cleared and the Negotiable Instruments given as security attempted to be misused. The learned counsel for the petitioner further contended that it is for this reason, the respondent did not directly file a complaint against the petitioner and a person claiming himself to be a Power of Attorney Agent of the Firm has filed the complaint. The learned counsel brought to my notice the Power of Attorney document that was marked as Ex.P-6. By pointing out to this document, the learned counsel would contend that the Power of Attorney has been executed in favour

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of the Agent only on 30.04.2002 and has been notarised on the same day. However, the complaint in this case has been filed on 22.04.2002 much before the power was executed in favour of the Agent. The learned counsel contended both the Courts below failed to take notice of this vital fact. Therefore, the learned counsel submits that this Criminal Revision Petition must be allowed on this sole ground.

5.The learned counsel for the respondent contends that both the Courts below have properly appreciated the evidence available on record and also the facts and circumstances of the case and have found the petitioner to be guilty for an offence under Section 138 of the Negotiable Instruments Act and there is no ground to interfere with the findings of the Courts below more particularly since this Court is exercising its revisional jurisdiction.

6.In this case admittedly the petitioner had taken a stand by way of a legal notice dated 26.02.2002 categorically stating that the loan borrowed from the respondent has already been repaid and the two cheques and three pronotes that were given as security for the said loan was attempted to be misused. This notice was issued almost at the same time when the two cheques were presented for clearance by the respondent.

7.A look at the Power of Attorney document marked as Ex.P-6 makes it very clear that it was executed only on 30.04.2002. In fact the Power of Attorney documents has also been notarised on the very same day. Therefore, this Power of Attorney has come into force only on 30.04.2002. However, the 138 complaint was filed on 22.04.2002 by the Agent on behalf of the respondent Firm. On the date when the complaint was filed, the Agent did not have the authority to represent the respondent Firm. In other words, the complaint that was filed on 22.04.2002 is non-est for the simple reason that it was filed by a person who did not have the authority to represent the respondent Firm.

8.This crucial fact has missed the attention of both the Courts below. When the same was pointed out to the learned counsel for the respondent before this Court, the learned counsel was not able to give any satisfactory explanation. It is important to look at this crucial issue in the background wherein it is definite case of the petitioner that he has already settled the loan to the respondent, and therefore, the respondent firm did not have an existing liability on the date when the cheques were presented for collection. While examining the witnesses on the side of the respondent, it is this Agent who has again deposed on behalf of the respondent Firm. None of the partners of the Firm have chosen to get it into box and depose on behalf of the respondent Firm. Therefore, the apprehension of the petitioner that the cheques that were given

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as security towards loan, which was subsequently cleared, is being misused stands established in this case.

9.This Court has no hesitation to set aside the order of both the Courts below since both the Courts have failed to address this crucial fact which goes to the very root of the maintainability of the complaint.

10.In the result, the order of the trial Court as confirmed by the Appellate Court is hereby set aside and this Criminal Revision Petition is allowed. The bail bond executed by the petitioner shall sand cancelled and fine amount, if any, paid by the petitioner shall be refunded to him. The criminal Revision stands allowed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

Kp

To
1.The Additional District Judge,
(Fast Track Court),
Vellore District.

2.The Judicial Magistrate-II,
Judicial Magistrate Court,
Vellore.

3. The Chief Judicial Magistrate, Vellore(For information)

+1 CC to Mr.E. Kannadasan, Advocate sr 46334.
+1 CC to Mr.V. Madhavan, Advocate sr 46784.

Crl.R.C.No.89 of 2011

SP(24/07/2018)

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