Bail Slip

The Petitioner herein/Accused namely V.Srinivasulu, S/O Vattapa Gounder, was directed to be released on bail vide order dated 29/05/2013 made in Crl.R.CNo.693 of 2013 and M.P.1/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.693 of 2013
and
M.P.No.1 of 2013

V. Srinivasalu ...Petitioner/Accused

Vs.

K.M. Munivenkatappa ...Respondent/Complainant

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the conviction imposed in the order dated 02.02.2013 made in C.A.No.56 of 2012 on the file of the Principal District and Sessions Judge, Krishnagiri, confirming the conviction imposed in judgment dated 13.08.2012 made in S.T.C. No.13 of 2011 on the file of the learned Judicial Magistrate Fast Track Court at Hosur, sentencing the accused to undergo simple imprisonment for six months and to pay compensation of Rs.1,10,000/- in default of payment of the fine amount to undergo simple imprisonment for one month by allowing this Criminal Revision Petition.

For Petitioner : Mr.R.Jayaprakash

For Respondent: Mr.K. Elangovan

O R D E R

The allegation in the complaint is that the accused is an employee of the M/s.Tamil Nadu Transport Corporation Ltd., Hosur and the complainant is a Retired Executive Officer. The accused and the Complainant are known to each other for the last many years, taking advantage of the relationship, on 01.05.2007, the accused had approached the complainant for hand loan of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) for his family's urgent need with a promise that he will pay back the same in a month's time and having received the said amount, on the same day, the accused had issued a cheque for the said sum of Rs.1,50,000/-. The said cheque was drawn on M/s.Canara Bank, Hosur Branch vide cheque No.732705 dated 30.05.2005 in A/c. No.23622. The cheque was presented for encashment, which was returned for want sufficient funds. The complainant filed a case under Section 138 of Negotiable Instrument Act in STC. No.1374 of 2007. Therefore, compromise was arrived at the accused gave two cheques for Rs.75,000/- each, dated 25.01.2010 and 25.07.2010. After short period, the accused have taken back the cheque dated 25.01.2010 and issued another cheque dated 25.09.2010. When the cheque was presented for collection that was dishonored for want of sufficient funds. Therefore, the complainant issued statutory notice dated 20.11.2010. The accused replied to the same vide reply dated 03.12.2010. Therefore, the complainant filed the present case under Section 138 of Negotiable Instrument Act. The complainant examined himself as PW1 and marked nine documents. The accused himself was examined as DW1, he has not chosen to mark any documents to prove his defence. After full pledged trial, the trial Court convicted the accused for offence under Section 138 of Negotiable Instrument Act read with 142 of Negotiable Instrument Act and sentenced to undergo a simple imprisonment for a period of six months and to pay a compensation, in default to undergo a simple imprisonment for a further period of one month.

2. Aggrieved the judgment of conviction and sentence, the accused preferred an appeal in C.A.No.56 of 2012 before the Principal District and Sessions Judge, Krishnagiri. The learned Judge confirmed the sentence passed by the trial Court and dismissed the appeal. Challenging the said judgment, present revision has been filed before this court.

3. The learned counsel for the petitioner would submit that the cheques were issued only for collateral purpose. According to him, the learned counsel, during pendency of trial, the accused has paid a sum of Rs.50,000/- to the complainant and the same has been acknowledged by the complainant. Subsequently, by mortgaging certain properties remaining amount was also paid. Therefore, according to the learned counsel, as on date, there is no amount to be paid. The Court below have not taken into account these facts and thereby erroneously convicted and sentenced the accused as mentioned above. Therefore, the learned counsel prayed for setting aside the judgment of the Court below.

4. The learned counsel for the respondent would submit that a sum of Rs.50,000/- was paid during the pendency of trial. However, he denied the submission of the learned counsel for the petitioner that the remaining part of the loan amount was paid. There is absolutely no proof produced by the revision petitioner in support of his claim.

5. Heard the learned counsel appearing on either side and perused available on record.

6. The accused and complainant are known to each other. Due to that friendship, complainant gave a hand loan of Rs.1,50,000/- to the accused. Since the cheque issued by the accused was bounced, the complainant under Section 138 of Negotiable Instrument Act was filed by the complainant. However, compromise was entered into between the parties and the case was withdrawn. The accused promised to repay the loan and issued two fresh cheques. However, the same were also returned as unpaid. Therefore, the complainant has filed the present complaint and after trial, the trial Court has convicted and sentenced the accused as mentioned above.

7. As rightly pointed out by the learned counsel for the respondent, there is absolutely no proof produced by the accused to show that apart from Rs.50,000/-, the remaining amount were paid. Neither before the lower appellate Court, nor before this Court, the accused has produced even a single peace of evidence to show that the complainant received the balance amount. Therefore, in the absence of any proof no credence could be given to the said submission of the learned counsel for the accused. Therefore, this Court is of the view that the accused has not proved the factum of discharging his loan.

8. Once execution of cheque is admitted, borrowal of loan is admitted and plea of discharge is taken, it is for the petitioner/accused has to prove the discharge. Whereas in this case, the petitioner has not proved the repayment of loan even assuming that the revision petitioner repaid the loan during pendency of the legal proceedings that is subsequent to filing of the complaint, the same will not take away the offence committed by the petitioner/accused.

9. In the result, there is no reason to interfere the judgment of conviction and sentence imposed by the Court below. The Revision fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
   Krishnagiri.

2. The Judicial Magistrate, Fast Track Court,
   at Hosur.

+1cc to Mr.R.Jayaprakash, Advocate Sr.62085
+1cc to Mr.K.Elangovan, Advocate Sr.61609

Crl.R.C.No.693 of 2013
and
M.P.No.1 of 2013

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srg 11/07/2019