Bail Slip

Saravanan S/o.Gopal, male aged about 45 years is released on Bail vide the order of this court 10.10.2017 made in Crl.MP(MD)9166 of 2017 in Crl R.C(MD)769 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2018

DELIVERED ON : 10.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.769 of 2017

G.Saravanan : Petitioner/ Accused

Vs.

J.Sankaranarayanan : Respondent/ Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, praying to set aside the order passed in C.A.No.39 of 2016 on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam, dated 27.02.2017 and confirm the order passed in S.T.C.No.100 of 2015, dated 02.02.2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magistrate Level), at Theni and acquit the revision petitioner.

For Petitioner : Mr.R.Gandhi for Mr.T.Thirumurugan

For Respondent : Mr.J.Jeyakumaran

ORDER

The revision petitioner herein who was tried for offence under Section 138 of N.I. Act on complaint by Sankaranaryanan in S.T.C.No.100 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court (Magistrate Level) at Theni, is aggrieved by the order of conviction passed by the lower appellate Court, reversing the order of acquittal passed by the Trial Court. Therefore, this revision is directed against the Judgment of the learned Additional District and Sessions Judge, Theni at Periyakulam passed in C.A.No.39 of 2016, dated 27.02.2017.

2.Brief facts leading to this revision case:

(i)The cheque bearing No.042682 dated 12.06.2015 drawn by

G.Saravanan at Karur Vysya Bank, Theni favouring J.Sangaranarayanan for Rs.5 lakhs was presented for collection on the same day at Karur Vysya Bank, Bodinayakannoor Branch. The cheque was returned with endorsement memo 'insufficient fund'. Sangaranarayanan sent statutory notice to Saravanan through his lawyer intimating the return of cheque for want of fund and calling upon him to pay the cheque amount within 15 days. Saravanan on receipt of the notice issued reply denying any money transaction with Sangaranarayanan or issuance of the cheque. He also denied any acquaintance with Sangaranaryanan. He has alleged that Sangaranarayanan is acting as a benami to some one else and threatening. He was not present on the alleged date of cheque or borrowing.

(ii)After expiry of the statutory period, Sangaranarayanan filed private complaint under Section 138 of N.I. Act and the same was taken on file as S.T.C.No.100 of 2005 by the learned Judicial Magistrate, FTC (ML), Theni.

(iii)The complainant Sangaranarayanan deposed as PW-1. The subject cheque, collection challan, return memo, legal notice issued by the complainant, acknowledgment card and the reply notice of the accused were marked as Ex.P-1 to Ex.P-6.

(iv)The Trial Court dismissed the complaint holding that:

(a)the accused has denied the handwriting on the cheque. The complainant has not proved the handwriting of the accused;

(b)The complainant has not proved that he is a holder in due course; and

(c)The complainant has failed to examine Suriliraj and Laskhmanan to prove his bona-fide.

(v)Aggreived by the dismissal of his complaint, Sangrarnaryanan preferred appeal before the learned Additional District and Sessions Judge, Theni in C.A.No.39 of 2016. The first appellate Court allowed the appeal and convicted the accused (Saravanan) to undergo 1 year simple imprisonment and pay a fine of Rs.1000/- in default to undergo 3 months simple imprisonment.

3.The present revision case under consideration is directed against the judgment of conviction passed by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.39 of 2016 dated 27.02.2017.

4.Based on the evidence, the Trial Court has held that the accused has discharged his reverse burden. The prima facie burden of lability to pay the cheque amount got discharged by denying the signature and privity of contract with the complainant. Having failed to examine his friends Suriliraj and Lakshmanan to whom the cheque was alleged to have been given by the accused, the Trial Court has acquitted the accused.

5.Whereas, the first appellate Court has drawn presumption under Section 118 of the N.I. Act in respect of consideration and under Section 139 of the Act in respect of enforceable debt. The defence of the accused that he did not borrow money from the complainant, he did not issue the cheque to the complainant and the complainant have no wherewithal to lend such a huge sum, were negatived by the appellate Court.

6.Point for consideration:

"Whether the material placed by the accused is sufficient to hold that he has rebutted the presumption of consideration and enforceable debt?"

7.The first reason for acquitting the accused by the Trial Court is that the complainant had denied the signature in the cheque. The complainant had failed to prove the handwriting of the accused. Further, the Trial Court has compared the signature in the cheque and the signature of the accused in the postal acknowledgment card and had concluded that the signature varies.

8.The said reasoning assigned by the Trial Court is against law. Ex.P-1 is the cheque related to the account of the accused. On presentation, his bank has returned the cheque for insufficiency of fund and not for variation in the signature. The person who asserts the fact, should prove it. The accused asserts that the signature found in the cheque is not his signature. It is his burden to prove the negative. The Trial Court erred in shifting the burden of proving the negative upon the complainant. The Trial Court venture to compare the signature in the postal acknowledgment card with the disputed signature in the Cheque is improper. Comparison of signature can be done only based on admitted signature and the disputed signature drawn contemporaneously. The signature in the postal acknowledgement card is a self serving document, which is made subsequent to drawing of the cheque. The first appellate Court has rightly found fault in the manner in which the trial court has dealt the issue.

9.Next, the specific case of the complainant is that the accused borrowed money from him on 10.05.2015 to meet out his house loan and urgent family expenses and issued the cheque in his favour. Thus, he is the holder of the instrument and not the holder in due course. While so, the Trial Court has erred in holding that the complainant has not proved that he is holder in due course. The error of the Trial Court is the failure to distinguish a holder and holder in due course has lead to miscarriage of justice. The first appellate Court has therefore rightly reversed the Trial Court Judgment of acquittal.

10.Lastly, it is the accused who has mentioned about two persons (Suruliraj and Lakshmanan) and suggested to the complainant that he gave the cheque to those two persons as security for the loan he borrowed from them and he have no privity of contract with the complainant. However, the complainant has denied the suggestion. While so, it is the burden of the accused to call those persons and examine to prove that the cheque was not given to the complainant, but to some other persons as security. Contrarily, once again the Trial Court has miserably failed to apply proper rule of evidence and held that the complainant has failed to examine the persons, who were named by the accused.

11.The statutory presumptions under Sections 118 and 139 of N.I. Act are to be rebutted with decree of preponderance of probablity. Mere denial is not sufficient to hold the accused satisfactorily discharged the burden of presumption. In addition to denial, some substantial evidence which could probablise the version is required. In this case, the accused has not brought out any such material either in his reply notice or in the cross examination of the complainant or through any independent witnesses.

12.In the above-said facts and circumstance, this Court finds that the order of acquittal passed by the Trial Court is erroneous and the same has been rightly reversed by the first appellate Court. Hence, the Criminal Revision Case is liable to be dismissed.

13.In the result, this Criminal Revision Case is dismissed. The judgment of conviction and sentence passe by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.39 of 2016 dated 27.02.2017 is hereby confirmed. The Trial Court is directed to secure the revision petitioner/accused and commit him to prison to undergo the remaining period of sentence. Bail bond if any executed by him, shall stand cancelled.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

smn

To

1.The Additional District and Sessions Judge,
Theni at Periyakulam.

2.The Judicial Magistrate,
Fast Track Court (Magistrate Level),
Theni.

3.The Chief Judicial Magistrate,
Theni District.

4.The Superintendent Central Prison,
Madurai.

5.The Record Keeper,(2 COPIES)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.J.Jeyakumaran, Advocate in SR No.89944
+1cc to Mr.T.Thirumurugan, Advocate in SR No.90097

Crl.R.C(MD)No.769 of 2017

NM/SKN/SAR I/16.11.18/5P/9C