

**BAIL SLIP**

Packiyaraj Augustine, S/o.Esaakku Nadir, male aged about 51 years was released on bail vide the order of this Court dated 15.12.2016 made in CrI.Mp(MD)No.12316/16 in CrI.R.C.(MD)No.846 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 25.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.(MD)No.846 of 2016

Packiyaraj Augustine ...Petitioner/Appellant/accused

Vs.

Devaraj Nadar ...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C., to set aside the judgment made in C.A.No.13 of 2016, by the II-Additional District and Sessions Judge, Thoothukudi, dated 20.09.2016 confirming the judgment of conviction and sentence made in S.T.C.No.17 of 2015, by the Judicial Magistrate, Sathankulam, dated 11.03.2016.

For Petitioner	: Mr.M.P.Senthil
For Respondent	: Mr.M.S.Jeyakarthish

ORDER

This Criminal Revision Petition has been filed to set aside the judgment made in C.A.No.13 of 2016, by the II-Additional District and Sessions Judge, Thoothukudi, dated 20.09.2016 confirming the judgment of conviction and sentence made in S.T.C.No.17 of 2015, by the Judicial Magistrate, Sathankulam, dated 11.03.2016.

2. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

3. Perused the records.

4. This revision is directed against the concurrent findings of the Court below, wherein, the revision petitioner found guilty of dishonoring the cheque for a sum of Rs.5,50,000/-, dated 18.02.2013, issued by him, in favour of the respondent herein. The complainant and the revision petitioner are known to each other. To meet out the family expense, the revision petitioner borrowed a sum of Rs.5,50,000/- on 18.02.2013 and gave a post dated cheque drawn on Tamil Nadu Mercantile Bank, Meiyanaapuram Branch. The cheque was presented at Canara Bank on 18.02.2013 and the same was returned



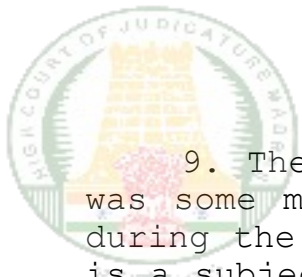
with an endorsement as 'insufficient fund'. After issuing statutory notice to the revision petitioner, the respondent/complainant had preferred the complaint.

5. The learned Judicial Magistrate, Sathankulam has taken the complaint in S.T.C.No.17 of 2015. While the complainant as contended that the cheque was issued to discharge the hand loan borrowed by the accused/revision petitioner, the accused has defended the case on the ground that the cheque was issued for the debt incurred in the year 2011. Though, he has repaid the entire loan amount, the complainant has retained the cheque issued to him and had misused it. It is also contended by the accused/revision petitioner that while borrowing a sum of Rs.7,00,000/- on installment during the year 2011, he gave two blank cheques to the complainant. Even after discharging the entire debt, the complainant did not return those blank cheques. He filed a private complaint in the name of his friend before the Thoothukudi Court by misusing one of the said cheque given by the revision petitioner and the other cheque, is the subject matter of the present revision.

6. The trial Court has drawn a presumption of Section 138 of the Negotiable Instruments Act against the accused and observe that though the accused has come out with some explanation to rebut the presumption, denial of legally enforceable debt is not sufficient without adequate document to substantiate the rebuttal. Hence, the trial Court has convicted the accused/revision petitioner and sentenced him to undergo one year Simple Imprisonment and pay a fine of Rs.3,000/-.

7. Aggrieved by that, an appeal before the II-Additional District and Sessions Court, Thoothukudi District in C.A.No.13 of 2016 was preferred by the accused. The Lower Appellate Court, after considering the submissions made by the respective parties, has referred the statutory notice issued by the complainant and the reply of the accused to the statutory notice and held that the issuance of cheque from the accused account is not denied by the accused. Though he contended that the cheque was issued as a security for the earlier loan transaction, there is no evidence to substantiate that the loan availed from the complainant, was discharged by the accused. Hence, the Lower Appellate Court has confirmed the judgment of the trial Court.

8. In the present revision petition, reiterating the same grounds raised before the Appellate Court. The learned counsel for the revision petitioner would submit that the Courts below have failed to note that the cheque was issued as a security and so as to prove that there is no legally enforceable debt. The accused has sent a reply. By way of suggestion to the de-facto complainant, the previous loan transaction has been elicited. Thus the accused has probalized the fact that the cheque was issued as security to an earlier loan transaction therefore the reverse burden of proof for preponderance of probability get discharged and the complainant is bound to prove that there exists legally enforceable debt.



9. The reply notice is Ex.P-6. Though it indicates that there was some money transaction between the complainant and the accused during the year 2011, there is no indication that the cheque, which is a subject matter of the revision petition was issued as security for the said debt incurred by the accused in the year 2011. Mere denial of legally enforceable debt will not amount to discharge of the reverse burden. There must be some evidence which though may not be proved beyond doubt, but, atleast indicate the prima facie material that there is no enforceable debt in respect of the cheque issued by the accused. Whereas, in this case, the issuance of cheque is admitted and the earlier debt had been proved by either orally or through document. A person admittedly borrowed a sum of Rs.7,00,000/- and discharged the same cannot afford to allow his cheque to be retained by the lender. The explanation given by the accused does not probabalizes his defence.

10. Hence, this Court finds no merits in the Criminal Revision Petition. Accordingly, the Criminal Revision Petition is dismissed and the judgment of the trial Court in C.A.No.13 of 2016, by the II-Additional District and Sessions Judge, Thoothukudi, dated 20.09.2016 confirming the judgment of conviction and sentence made in S.T.C.No.17 of 2015, by the Judicial Magistrate, Sathankulam, dated 11.03.2016 is confirmed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

- 1.The Judicial Magistrate, Sathankulam.
- 2.-Do-thro' The Chief Judicial Magistrate, Tuticorin.
- 3.The II-Additional District and Sessions Judge,
Thoothukudi.
- 4.-Do-thro' The Principal Sessions Judge, Tuticorin.

+1CC to Mr.M.P.Senthil, Advocate, SR.No.92539

+1CC to Mr.M.S.Jeyakarthik, Advocate, SR.No.91983

Cr1.R.C. (MD) No.846 of 2016
25.10.2018

SJI

ES/SKN/RSK/SAR 3/27.11.2018/3P/7C

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