

Bail Slip

The Appellant/Accused namely M.Siva, S/o.Munusamy was directed to be released on bail as per order of this Court dated 05/09/2018 in Crl.MP.No.11730 / 2018 in Crl.Rc No.1002/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.05.2019

PRONOUNCED ON : 12.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1002 of 2018

and

Crl.M.P.No.6743 of 2019

M.Siva

... Petitioner/Accused

Vs.

K.Vediyappan

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment made in C.A.No.53 of 2017 dated 11.07.2018 on the file of the Principal Sessions Judge at Krishnagiri confirming the Judgment in STC No.968 of 2014 dated 27.10.2017 and call for the records relating to the impugned Judgment and acquit the petitioner from the charges.

For Petitioner : Mr.V.Nithyanandam

For Respondent : Mr.M.A.Gouthaman

ORDER

This Criminal Revision Petition is filed to set aside the Judgment dated 11.07.2018 in C.A.No.53 of 2017 on the file of the Principal Sessions Court, Krishnagiri confirming the Judgment passed by the learned Judicial Magistrate No.I, Krishnagiri in STC No.968 of 2014 dated 27.10.2017 and call for the records relating to the impugned Judgment and acquit the petitioner from the charges.

2.The petitioner is the accused on a private complaint filed by the respondent as complainant for the offence under Section 138 of the Negotiable Instruments Act. For the sake of convenience the petitioner is referred as "Accused" and the respondent as "complainant" as found in the complaint.

3.The complainant was a Carpenter having cash to purchase land and the accused is a Dentist, having a clinic at Hosur. The accused is known to the complainant through his elder brother Thambiraj. The accused requested a loan of Rs.8,50,000/- from the complainant for his urgent needs during the month of June 2013 and promised to return the same during the 1st week of January 2014. The complainant has given a sum of Rs.8,50,000/- during June 2013, for which the accused has given a post dated cheque in the name of complainant. The cheque was drawn at Canara Bank, Hosur bearing No.195600 dated 22.01.2014 for the said amount. On 22.01.2014, the complainant presented the cheque for collection through Pallavan Grama Bank, Krishnagiri, the same was returned unpaid for the reason "funds insufficient". Hence, the complainant issued a legal notice on 22.02.2014 and the same was received by the accused on 04.03.2014. He sent a reply dated 01.04.2014, denying the same. Hence, the complainant filed a complaint before the Judicial Magistrate No.I, Krishnagiri.

4.During the trial on the side of the complainant PW1 and PW2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the defense no witnesses were examined and no documents were marked.

5.PW2 was known to the complainant as well as the accused and he has spoken about the facts of the loan borrowed by the accused and the cheque given by the accused. Initially, the defense taken by the accused was that the complainant is a total stranger and he has no liability towards him and he had no money transaction whatsoever. Further the accused had given the cheque to Thambiraj, who is the brother of the complainant for some accommodation purpose. The complainant misused the said cheque and without any authority had fulfilled the cheque and initiated the complaint.

6.During the pendency of the trial before the learned Judicial Magistrate No.I, Krishnagiri, the accused had paid a sum of Rs.1,50,000/- to the complainant on 08.02.2016 and Rs.1,00,000/- on 08.03.2016. Totally the accused had paid a sum of Rs.2,50,000/-. Taking all the facts into consideration, the trial Court by Judgment dated 27.10.2017 in S.T.C.No.968 of 2014 had found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year Simple Imprisonment and in default, to

pay a fine of Rs.5,000/- and simple Imprisonment for two months under Section 255(2) Cr.P.C.

7. Aggrieved against the Judgment of the trial Court the accused filed Crl.A.No.53 of 2017 before the learned Principal Sessions Judge, Krishnagiri. The lower appellate Court by its Judgment dated 11.07.2018 confirmed the Judgment of the trial Court. Against which, the present Criminal Revision has been filed.

8. This Court on 05.09.2018 admitted the revision petition in Crl.R.C.No.1002 of 2018 and suspended the substantive sentence of imprisonment in Crl.M.P.No.11730 of 2018 and directed the accused to be enlarged on bail on condition that he shall deposit a sum of Rs.4,50,000/- to the credit of the case in S.T.C.No.968 of 2014 within a period of six weeks.

9. Unable to comply with the said condition within the time the accused filed Crl.M.P.No.14752 of 2018 in Crl.R.C.No.1002 of 2018 seeking for extension of time to deposit the amount of Rs.4,50,000/- to the credit of S.T.C.No.968 of 2014. This Court by order dated 08.11.2018 granted four weeks time for depositing the said amount.

10. The complainant moved a petition Crl.M.P.No.16413 of 2018 to vacate the interim order dated 05.09.2018 in Crl.M.P.No.11730 of 2018 passed by this Court. By the time the accused has deposited the amount of Rs.4,50,000/- to the credit of S.T.C.No.968 of 2014. Being satisfied with the compliance, this Court by order dated 07.12.2018 closed the petition.

11. Thereafter, when the matter was listed for hearing on 05.04.2019, the learned counsel for the accused submitted that he was not ready to argue the main revision on merits at that time. Therefore, this Court revoked the suspension of sentence and directed the trial Court to secure the custody of the accused to undergo the remaining period of imprisonment.

12. Thereafter, the accused moved a petition to suspend the sentence in Crl.M.P.No.6743 of 2019 on the ground that this Court without considering the inconvenience of the counsel revoked the suspension order already passed in Crl.M.P.No.11730 of 2018, which is arbitrary and prayed for suspension of sentence pending disposal of Crl.R.C.No.1002 of 2018.

13. When the matter was taken up for hearing during vacation, the accused made a payment of Rs.1,50,000/- by way of demand draft in favour of the complainant and subsequently the accused paid a sum of Rs.1,00,000/- by cash in the open Court. Thereafter, there was a compromise talk between the accused and the complainant. The complainant agreed for the compromise on

the accused paying balance amount of Rs.2,00,000/-. At this juncture the accused had brought to the notice of the order passed by the lower appellate Court in CrI.R.C.No.5 of 2018 filed by the complainant seeking enhancement of sentence. The lower appellate Court by order dated 11.07.2018 had modified the order of the trial Court, directing the accused to pay a fine of Rs.6 lakhs + 6 lakhs with 9% interest p.a., in default two month simple imprisonment and fine amount to be paid to the complainant as compensation. The lower appellate Court having dismissed the appeal in CrI.A.No.53 of 2017 and confirming the Judgment of the trial Court, there is no necessity to pass an order in CrI.R.C.No.5 of 2018. Despite both the orders arises out of the same Judgment in S.T.C.No.968 of 2018, separate orders were passed on the same day on 11.07.2018. The lower Appellate Court ought to have passed common order to avoid such anomaly. However, much water has flown and now the accused and the complainant have reconciled the disputes between them.

14.After detailed deliberations both the accused and the complainant had arrived at a compromise and the complainant agreed to give quietest on receipt of Rs.11,50,000/-, which is inclusive of cheque amount of Rs.8,50,000/-, interest and expenses. It is admitted by the accused and the complainant that the total amount of Rs.11,50,000/- has been paid by the accused to the complainant on various dates as follows:-

"(i)During pendency of the trial before the learned Judicial Magistrate No.I, Krishnagiri, a sum of Rs.2,50,000/- has been paid by the accused.

(ii)As per the order of this Court in CrI.M.P.No.11730 of 2018 and CrI.M.P.No.14752 of 2018 in CrI.R.C.No.1002 of 2018, a sum of Rs.4,50,000/- has been paid by the accused as security deposit amount in S.T.C.No.968 of 2014.

(iii)During the hearing of CrI.M.P.No.6743 of 2019 the accused has made payment of Rs.1,50,000/- by way of D.D and subsequently, the accused has paid Rs.1,00,000/- by cash in the open Court to the complainant.

(iv)Thereafter, the petitioner has paid balance amount of Rs.2,00,000/- by way of demand draft in favour of the complainant."

15.The accused and the complainant appeared before this Court on 03.07.2019 and filed a Joint Compromise Memo for compounding the offence under Section 138 of Negotiable Instruments Act. The accused has paid a total amount of Rs.11,50,000/- towards full and final settlement to the

complainant. The matter is settled and the compromise is arrived between the parties. The complainant has agreed and willing for compounding the sentence imposed in S.T.C.No.968 of 2014. Both the complainant and the accused appeared before this Court and filed the Joint compromise memo. As per Section 147 of Negotiable Instruments Act, every offence punishable under this Act shall be compoundable.

16.In view of the above, the offence is compounded. The complainant is permitted to withdraw an amount of Rs.4,50,000/- deposited by the accused on 01.12.2018 to the credit of S.T.C.No.968 of 2014 before the learned Judicial Magistrate No.I, Krishangiri.

17.In the result, the conviction and sentence imposed on the accused in S.T.C.No.968 of 2014 on the file of the Judicial Magistrate Court No.I, Krishnagiri is set aside and this Criminal Revision is allowed. The fine amount, if any paid, shall be refunded to him. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Court,
Krishnagiri.
- 2.The Judicial Magistrate No.I (FAC),
Krishnagiri.
- 3.The Chief Judicial Magistrate,
Krishnakiri.
- 4.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.V.Nithyanandan, Advocate, S.R.No.59640
+1cc to Mr.Ma.Gouthaman, Advocate, S.R.No.59089

Cr1.RC.No.1002 of 2018

NRL (CO)

RRS (19/08/2019)