

BAIL SLIP

The Petitioner herein viz., R.Sivakala, W/o.Rajendran was directed to be released on bail by the Order of this Hon'ble Court dated 06.09.2018 in Crl.M.P.No.11819 of 2018 in Crl.R.C.No.1009 of 2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.1009 OF 2018

AND

CRL.M.P.NO.11820 OF 2018

R.Sivakala

...

Petitioner/Appellant/
Accused

Vs

D.Sethuram

...

Respondent/Respondent/
Complainant

PRAYER:

Criminal Revision case filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the judgment dated 12.02.2018 made in C.A.No.183 of 2016 on the file of the learned V Additional District and Sessions Court, Coimbatore, confirming the judgment dated 17.11.2016 made in C.C.No.131 of 2013 on the file of the learned Judicial Magistrate (Fast Track Court No.1, Magisterial Level), Coimbatore by allowing this Criminal Revision Case.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.C.Arunkumar

WEB COPY

ORDER

The petitioner is the accused and the respondent is the complainant. The case of the respondent/complainant is that the petitioner/accused approached the respondent/complainant and borrowed a sum of Rs.9,50,000/- on 27.02.2010 and executed the promissory note in favour of the complainant agreeing to repay the same with interest at the rate of 24% per annum. On

12.03.2010, the revision petitioner/accused had again borrowed a sum of Rs.9,00,000/- from the respondent/complainant and executed the promissory note agreeing to repay the same with interest at the rate of 24% per annum. The petitioner/accused had paid the interest up to 18.10.2010, to discharge the debt he issued cheques dated 19.10.2010 bearing Nos.647771 and 647772 for a sum of Rs.9,50,000/- and Rs.9,00,000/- respectively, drawn on ICICI Bank, Tiruppur Branch. When the cheques presented for collection on 19.10.2010, the same were dishonoured for want of sufficient funds, and the same was intimated to the respondent/complainant on 21.10.2010. The respondent/complainant sent a statutory notice on 27.10.2010, which was received by the petitioner/accused on 01.11.2010. The accused neither returned the money nor sent any reply. Therefore, the respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the petitioner/accused before the learned Judicial Magistrate, Fast Track Court No.1 Magisterial Level, Coimbatore, for the offence under Section 138 of Negotiable Instrument Act.

2 After taking cognizance of the complaint and completing the legal formalities, in order to prove the case of the complainant one witness was examined and 11 documents were marked.

3 After completion of complainant side evidence, when the incriminating materials culled out and put before the accused he denied the same as false and also on the side of the accused, no witness was examined and no document was marked. After completing the enquiry and also the oral and documentary evidence, the learned Judicial Magistrate, Fast Track Court No.1 Magisterial Level, Coimbatore, found the accused guilty for the offence under Section 138 of Negotiable Instrument Act, convicted and sentenced to undergo Simple Imprisonment for a period of six months and to pay Rs.18,50,000/- as compensation in default to undergo for a further period of two months simple imprisonment. Challenging the order, the petitioner/accused has filed an appeal before the learned V Additional District and Sessions Judge, Coimbatore. After elaborate enquiry, the learned V Additional District and Sessions Judge, confirmed the order of the learned Judicial Magistrate, Fast Track Court No.1 Magisterial Level, Coimbatore, and dismissed the appeal. As against the order of learned V Additional District and Sessions Judge, Coimbatore in C.A.No.183 of 2016 dated 12.02.2018, the petitioner/accused has preferred the present Criminal Revision Case before this Court.

4 The learned counsel for the petitioner would submit that both the Courts below have failed to consider the defence taken by the revision petitioner/accused. Even in the cross

examination also, he has established the defence. The respondent/complainant has also admitted that during the year of 2009 to 2013 he has no business and also has no income and he has not paid income tax. Further he would contend that the complainant does not have sufficient means to lend such a huge amount of Rs.18,50,000/- Both the Courts have failed to consider these aspects. The learned counsel relied upon the decisions of the Honourable Supreme Court in the case of BASALINGAPPA VS. MUDIBASAPPA reported in SLP (Crl) No.8641 of 2018, stating that the Honourable Supreme Court has held that the complainant does not have sufficient means to lend the money. Admittedly, during the year 2009 to 2013 there was no business and no income and he has not paid any income tax. Therefore the Judgment of the Courts below warrants interference.

5 The learned counsel for the respondent would submit that the revision petitioner/accused has not sent any reply and during the pendency of the complaint before the learned Judicial Magistrate, revision petitioner/accused sent a letter to the respondent/complainant directing to send a reply. The petitioner had not denied the signature found in the cheques and admitted the issuance of the cheques. The trial Court has rightly observed that when the petitioner admitted the signature, he has to prove the fact, how the cheques had been in the hand of the respondent and in the absence of any proof for the above, the denial of the petitioner cannot be accepted. Both the Courts have found the reason that the revision petitioner has not rebutted the presumption, since she has admitted the execution of the cheques and the signature also. The petitioner/accused has not rebutted the statutory presumption in the manner known to law either through direct evidence or preponderance of probabilities. Therefore, the learned V Additional District and Sessions Judge, has rightly re-appreciated the evidence as well as the documents and convicted the petitioner. Hence, there is no need for interference.

6 Heard the submissions made by the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7 The averment made in the complaint is that the petitioner/accused approached the respondent/complainant and borrowed a sum of Rs.9,50,000/- on 27.02.2010 and executed the promissory note in favour of the complainant agreeing to repay the same with interest at the rate of 24% per annum. On 12.03.2010, the revision petitioner/accused had again borrowed a sum of Rs.9,00,000/- from the respondent/complainant and executed the promissory note agreeing to repay the same with interest at the rate of 24% per annum. The petitioner/accused

had paid the interest up to 18.10.2010, to discharge the debt he issued cheques dated 19.10.2010 bearing Nos.647771 and 647772 for a sum of Rs.9,50,000/- and Rs.9,00,000/- respectively, drawn on ICICI Bank, Tiruppur Branch. When the cheques were presented for collection on 19.10.2010, the same were dishonoured for want of sufficient funds, and the same was intimated to the respondent/complainant on 21.10.2010. The respondent/complainant sent a statutory notice on 27.10.2010, which was received by the petitioner/accused on 01.11.2010. The accused neither repaid the money nor sent any reply. Therefore, the respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the petitioner/accused before the learned Judicial Magistrate, Fast Track Court No.1 Magisterial Level, Coimbatore, for the offence under Section 138 of Negotiable Instrument Act.

8 Admittedly, the revision petitioner/accused has borrowed money from the respondent/complainant by executing the pro note and subsequently he issued the cheques. When the cheques were presented, the same were returned for want of sufficient funds. Thereafter, statutory notice was issued and the same was acknowledged by the revision petitioner/accused, for which he neither sent a reply nor repaid the money. Therefore the respondent filed a private complain before the learned Judicial Magistrate, Fast Track Court No.1 Magisterial Level, Coimbatore. The revision petitioner/accused has not denied the transaction, only denied the quantum of money borrowed. According to the respondent/complainant the petitioner borrowed the amount in two occasions on 27.02.2010 and 12.03.2010.

9 The main defence taken by the revision petitioner is that during the year of 2009 to 2013 he has no business and also has no income and he has not paid income tax. Further he would contend that the complainant does not have sufficient means to lend such a huge amount of Rs.18,50,000/-. Both the Courts below failed to consider the financial capacity of the respondent/complainant that he has no capacity to lend such huge amount of Rs.18,50,000/-.

10 The first appellate Court is final Court of fact finding it can re-appreciated and re-assess entire evidence independently with the materials available on records before it and by considering the suggestions put by the petitioner/accused before the respondent during the deposition also. Once the petitioner has admitted the execution of the cheques and not denied the signature, both the Courts below have rightly drawn the statutory presumption under Section 139 of Negotiable Instruments Act. It is for the accused to rebut the presumption in the manner known to law.

11 On reading of the entire materials, this Court has also find that the revision petitioner/accused has not rebutted the statutory presumption in the manner known to law. The defence taken by the accused is bald defence and without any substance and materials. Therefore, both the Courts below have rightly rejected the defence taken by the petitioner/accused and draw the statutory presumption under Section 139 of Negotiable Instruments Act. It is well settled proposition that while exercising the revisional jurisdiction, this Court need not sit in the arm chair of the appellate Court and revisit the entire evidence. However, this Court has to see whether there is any perversity in the appreciation of evidence while deciding the case by the appellate Court.

12. In this regard, it is pertinent to place reliance on the judgment of the Hon'ble Apex Court in the case of BASALINGAPPA VS. MUDIBASAPPA reported in SLP (CrI) No.8641 of 2018.

13 Considering the facts and circumstances of the case, this Court feels that there is no merit in the revision and this Court is not inclined to interfere with the judgment of both the Courts below.

13 In the result, this Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The learned Judicial Magistrate
(Fast Track Court No.1, Magisterial Level),
Coimbatore.
2. The learned V Additional District and Sessions Judge,
Coimbatore.

+2cc to Mr.C.Arunkumar, Advocate, S.R.No.35659
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.36140

CrI.R.C.No.1009 of 2018
and
CrI.M.P.No.11820 of 2018

RJI (CO)
CS/14/06/2019