BAIL SLIP

The Petition herein/Accused namely R.Srinivasan, S/o.S.Rangarajan was released on bail by this Honourable court dated 03.08.2011 in MP.No. 1/2011 in Crl.RC.No. 1012/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Revision No.1012 of 2011

R. Srinivasan ... Petitioner

Vs

Janab Kaka Sabhir Ahmed ... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 read with 401 of Cr.P.C. to set aside the Judgment dated 10.05.2011 made in C.A.No.68 of 2009 on the file of Additional District Sessions Judge, FTC No.I, Chengalpattu as confirmed the order of the conviction dated 09.09.2009 made in CC No.705 of 2007.

For petitioner : Mr.A. Lakshmi Raj Rathnam

For respondent : Mrs. A. Sumathy

O R D E R

This Criminal Revision petition is preferred by the accused against the conviction by the Courts below.

2. The brief facts of the case is that the complainant and the accused were dealing in leather goods. During the course of their business transactions, the accused owed Rs. 9,63,502.75/- to the complainant. Towards discharge of the same, he has issued a cheque for Rs.2,00,000/- on 13.02.2006, which was returned as "Insufficient funds". This lead to initiation of the criminal case against the accused in CC No. 705 of 2007 before the Judicial Magistrate, Tambaram. Thereafter, compromise entered between the parties. The undated cheque given to the complainant was permitted to be present for a sum of Rs. 7,63,502.75/- towards full quit. When that cheque was presented on 11.05.2007 for collection, it was returned with an endorsement "Account does not exist". For the Statutory notice sent to the accused, he neither replied nor took any action for the settlement of payment.

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3. In the criminal complaint filed under Section 138 of Negotiable Instrument Act, the accused has contested the case. The Courts below have concurrently held that the accused has not discharged the burden of presumption, though he has taken the plea that the cheque was given to the complainant only as a Security and not for discharge of any legally enforceable debt.

4. The learned Counsel appearing for the petitioner would submit that the respondent earlier filed criminal complaint in CC No. 762 of 2006 for dishonour of the cheque for a sum of Rs.2,00,000/- and the subsequent criminal complaint for dishonour of the cheque for Rs.7,63,503.75/- which is the subject matter of the Revision petition were tried together. Though the accused has not replied to the statutory notice in this case, for the earlier notice given by the complainant in respect of the cheque for a sum of Rs.2,00,000/-, he has replied. The statutory notice for the present case and the reply of the accused in the earlier case is taken together and a comparative reading is made, the falsity of the complaint will be exposed.

5. The learned Counsel submitted that it is an admitted fact that the complainant and the accused had business transactions. There was no due of Rs.9,63,502.75/- as alleged by the complainant in his first notice dated 07.06.2006. While the Appellate Court has disbelieved the case of the complainant that the earlier cheque for a sum of Rs.2,00,000/- was not proved by the complainant and not issued by the accused to discharge the legally enforceable debt, the same analogy should have been drawn for the second complaint also.

6. Per contra, the learned Counsel appearing for the Complainant /respondent would submit that the statutory notice dated 28.07.2007 in this case clearly indicates under what circumstances the present cheque was issued. The very fact that the said cheque was issued from the account "not existing" reveals the culpable mental state of the accused. The accused took a plea that the cheque was issued as a Security and it is an undated cheque. Having admitted the execution of the cheque and permitted the complainant to present the cheque when contacted overphone, the accused can not revert back and say that the said cheque was not given towards the discharge of legally enforceable debt.

7. Considering the rival submissions made on either side and perusal of the records of the Courts below, this Court find that the complainant and the accused had business transactions for quit some time. During the course of such business transactions, cheques were given to the complainant by the accused either in his individual name or in the name of his

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Firms “Adhitya Leathers” or “Jay ORR Leathers”. The present cheque in dispute is concerned, this has been issued by the revision petitioner as Proprietor of “Jay ORR Leathers”. It is not the case of the accused/Revision petitioner that the cheque not issued by him or does not belong to the account maintained by him. His defence is that the cheque was issued only as Security and not for the discharge of the outstanding in the business transactions.

8. While, the complainant has prima facie established that the outstanding was about Rs.9,63,502.75/-. The accused has miserably failed to discharge the said prima facie presumption which he could have done through reply notice or atleast placing his statement of account before the Court or calling upon the complainant to be present his statement of account. Only all or any of the 3 actions could have saved the accused from the burden of presumption.

9. In such circumstances, the Courts below considered the facts of the case and the evidence let in by the parties have held that the accused guilty. From the material evidence, this Court find no legal infirmities in the conclusion of the Courts below.

10. The learned Counsel for the revision petitioner would submit that the revision petitioner is presently 79 years old and he may not withstand the ordeal of imprisonment. He also submit that the revision petitioner due to the loss incurred in his business does not have any financial resources to pay the cheque amount.

11. In the light of the above submissions, the period of imprisonment i.e one year simple imprisonment imposed by the Courts below for the offence under Section 138 of Negotiable Instrument Act, though appears to be proportionate to the cheque amount, considering the age and health of the revision petitioner, this Court is inclined to reduce the period of imprisonment to 6 months simple imprisonment.

12. Accordingly, one year simple imprisonment imposed by the Courts below is modified to 6 months simple imprisonment. Fine of Rs.5,000/- is confirmed. With the above modification in sentence, this Criminal Revision Petition is partly allowed.

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Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Vrn

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To

1.The Judicial Magistrate,
Tambaram.

2. The Chief Judicial Magistrate,
Chengalpet (For Information)

3.The Additional District and Sessions Judge,
Fast Track Court No.1, Chengalpet.

4.The Public Prosecutor,
High Court Madras.

+2cc to Mr.A.Laxmi Raj Rathnam, Advocate, S.R.No. 16475
+1cc to Mr.A.Sumathy, Advocate, S.R.No. 17092

Criminal Revision No.1012 of 2011

BS(CO)
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