BAIL SLIP

The Appellant in Crl.RC.No.14 of 2011 viz., P.R.Pandurangan, S/o.Pattabiraman was directed to be released on bail as per order of this court dated 04.01.2011 and made in MP.NO.1 of 2011 in Crl.RC.No.14 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.14 of 2011
and
MP.No.3 OF 2011

P.R.Pandurangan,
S/o.Pattabiraman,
No.33/20,K.P.N.Colony,
4th Street, Tiruppur-641 601. ... Petitioner/Accused

/versus/

H.Nagendra Prasath,
S/o.Hari Prasath,
C/o.Rayal Shipping,
405, K.M.Towers, Binny Compound,
2nd Street, Tiruppur-641 601. ... Respondent/Complainant

Prayer:-
Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C praying against the judgment dated 21.09.2010 made in C.A.No.47 of 2010 on the file of the Additional District & Sessions Judge, (Fast Track Court No.IV, Coimbatore @ Tiruppur) confirming the judgment dated 10.03.2010 made in S.T.C.No.1093 of 2005 on the file of the Judicial Magistrate No.2, Tiruppur.

For Petitioner : Mr.J.Franklin
For Respondent : Mr.N.S.Sivakumar

J U D G M E N T

This Revision Petition is directed against the concurrent finding of the Lower Appellate Court holding the revision petitioner guilty for offence under Section 138 of Negotiable Instrument Act.

2. The respondent herein is proprietor of M/s.Royal Shipping Service has initiated the Criminal proceedings against the revision petitioner for dishonouring the cheque issued by him for a sum of Rs.7 Lakhs. From the records, this Court finds that the petitioner and the respondent had financial business transaction. The subject cheque dated 28.07.2004 was given by the revision petitioner to discharge the debt of his son. When it was presented for collection same was retuned with endorsement "amount exceeds arrangements." The statutory notice was issued on 02.12.2004. The revision petitioner has received the notice but fail to respond. In the course of the trial, it has been contended that the cheque was stolen by the complainant and being misused. Further, it was also contended by the revision petitioner that there was no legally enforceable debt by the drawer to the drawee. However, both the Courts have rejected the said defence since, the cheque has been drawn by the revision petitioner. He admits the transaction between him and the complainant. No proof that the subject cheque was stolen. Therefore, presumption against him not discharged, hence liable for the return of the cheque.

3. Aggrieved by the conviction and sentence imposed by the Courts below, to undergo one year S.I and to pay a sum of Rs.14 Lakhs as compensation to the complainant. The present revision petition is filed challenging both the conviction and the sentence.

4. The learned counsel appearing for the revision petitioner would reinforce and re-agitate that the accused had no wherewithal to advance loan of Rs.7 Lakhs. There is no privity of contract between the revision petitioner and the complainant.

5. The above two contentions raised by the revision petitioner, were considered and rejected by the Courts below. When both the Courts below has held against the revision petitioner on the above facts no illegality in the finding could be highlighted by the revision petitioner. Further, de hors of the finding of the Courts below on facts, the material available would indicate that the complainant and the accused are not strangers. They had transaction for a long time. From out of loan availed for Rs.29 Lakhs from the chit company run by the complainant, part payment has been made and for the balance, the present cheque has been given. The defence taken during the trial has not been agitated by the accused persons at the earliest incident. When statutory notice was issued, he had an opportunity to explain under what circumstances the cheque was given. The accused has failed to give any reply. Even during the course of trial, he could have let in evidence to rebut the presumption. Again, he has failed to rebut the presumption by lilting in positive evidence. He has not even placed a prima

facie evidence to discharge the reverse burden.

6. While dealing with applicability of Section 138 of Negotiable Instrument Act, in respect of cheque given by the guarantor to discharge the debt of the principle. In ICDS Ltd Vs. Beena Shabeer and another reported in (2002) 6 SCC 426, the Hon'ble Supreme Court has held that:

> "The language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words "Where any cheque". The above noted three words are of extreme significance, in particular, by reason of the user of the word "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.
>
> The issue as regards the co-extensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act: 'Any cheque' and 'other liability' are the two key expressions which stands as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the Statute. Any contra interpretation would defeat the intent of the

legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus does not lend any assistance to the contentions raised by the respondents.

7. Relying the above judgment, the Supreme Court subsequently when the drawer of the dishonoured cheque was different from the person who owe the debt, held in Anil Sachar and another Vs. Shree Natha Spinners (Pvt) Ltd reported in 2011 (13) SCC 148,

> "According to the provisions of the aforestated section, there is a presumption with regard to consideration when a cheque has been paid by the drawer of the cheque. In the instant case, M/s. A.T. Overseas Ltd. paid the cheque which had been duly signed by one of its Directors, namely, Munish Jain. Munish Jain is also a Director in M/s. Shree Nath Spinners Pvt. Ltd.. As stated hereinabove, both are sister concerns having common Directors. Extracts of books of accounts had been produced before the trial court so as to show that both the companies were having several transactions and the companies used to pay on behalf of each other to other parties or their creditors. The above fact strengthens the presumption to the effect that M/s. A.T. Overseas Ltd. had paid the cheques to the complainants, which had been signed by Munish Jain, in consideration of goods supplies to M/s Shree Nath Spinners Pvt. Ltd. Of course, the presumption referred to in Section 139 is rebuttable. In the instant case, no effort was made by Munish Jain or any of the Directors of M/s. A.T. Overseas Ltd. for rebuttal of the aforestated presumption and, therefore, the presumption must go in favour of the holder of the cheques. Unfortunately, the trial court did not consider the above facts and came to the conclusion that there was no consideration for the cheques which had been given by M/s. A.T. Overseas Ltd. to the complainants.

> 17. It is true that a limited company is a separate legal entity and its directors are different legal persons. In spite of the aforestated legal position, in view of the provisions of Section 139 of the Act and the understanding which had been arrived at among the complainants and the accused, one can safely come to a conclusion that the cheques signed by Munish Jain had been given by M/s. A.T. Overseas Ltd. to the complainants in discharge of a debt or a liability, which had been incurred by M/s Shree Nath Spinners Pvt. Ltd.

8. In the said circumstances, having admitted the business transaction with the complainant and issuance of cheque to discharge the debt of his son, the revision petitioner cannot claim that there was no privity of contract between him and the complainant. Therefore, this Court finds no merit in the revision petition to upset the concurrent finding of the Courts below.

9. However, considering the facts of the case, this Court finds that the trial Court has imposed the maximum punishment of imprisonment of 1 year R.I as well as doubled the cheque amount as compensation, which appears to be very excessive for a 80 years old accused, who is the father of the real debtor and given the cheque to discharge debt of his son. Therefore, this Court modifies the sentence to the effect that the fine amount imposed on him deleted. The period of sentence regarding imprisonment shall stand unaltered. As a result, the modified sentence would by sentence of imprisonment for a term of one year Simple Imprisonment.

10. In the result, the Criminal Revision Case is Partly Allowed. The revision petitioner shall surrender within 30 days from today to undergo the period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Additional District & Sessions Judge,
   Fast Track Court No.IV,
   Tiruppur, Coimbatore.

2. The Learned Judicial Magistrate No.2, Tiruppur.

3. The Section Officer,
   Criminal Section, High Court, Madras.

4. The Chief Judicial Magistrate,
   Coimbatore.

5. The Public Prosecutor,
   High Court, Madras

6. The Superintendent of Police,
   Coimbatore District.

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.19507

Crl.R.C.No.14 of 2011
and
MP.No.3 OF 2011

PM(CO)
CS/08/04/2019