

Bail Slip

The Appellant/Accused namely K.Paresh, age 42 years, S/o.Kishore was directed to be released on bail as per order of the court dated 21.11.2011 in CrI.MP.No.1 of 2011 in CrI.RC.No.1671 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated :12.02.2019

Coram:
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1671 of 2011

K.Paresh .. Petitioner

/versus/

J.Rajaram .. Respondent

Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code against the conviction imposed by the judgment dated 07.10.2011 made in C.A.No.158 of 2011 on the file of the learned Additional District Sessions Judge cum Fast Track Court No.1, Coimbatore confirming the conviction of the learned Judicial Magistrate No.VI, Coimbatore in C.C.No.650 of 2007 dated 27.06.2011 for the offence under Section 138 of Negotiable Instruments Act.

For Petitioner :Mr.C.D.Johnson

For Respondent :No appearance

O R D E R

This revision is directed against the concurrent finding of the Courts below arising out of the private complaint under Section 138 of the Negotiable Instruments Act.

2. The facts of the case is that the revision petitioner herein has issued a cheque for Rs.3,50,000/- in favour of the complainant to discharge the hand loan, which he has borrowed earlier. When the cheque was presented for collection, the same was bounced for 'insufficient fund'. After issuing statutory notice to the accused, the complainant has preferred a private complaint under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate No.VI, Coimbatore.

3. The Judicial Magistrate No.VI, Coimbatore has tried the case under C.C.No.650 of 2007. The complainant was examined

himself as PW-1. Cheque issued by the accused was marked as Ex.P1; Bank Memo returning the cheque for want of fund was marked as Ex.P2; Statutory notice was marked as Ex.P3; and Acknowledgement card was marked as Ex.P4. The accused, who is the petitioner herein has not let in any defence witness.

4. While the complainant has prima facie established that the cheque was issued to discharge the hand loan availed by the accused, the accused has placed his defence by way of suggestion in the cross examination and oral submission through his counsel that the complainant and the accused are friends and there was some money transaction between them. The complainant has advanced some money for running tuition centre and dance class established by the accused. Financial assistance was given on a understanding that the complainant will be partner to the venture and there was no other borrowing. The cheque which was given as security has been misused. Pointing out inconsistency in the case of the complainant that initially Rs.1,75,000/- was advanced to the accused as loan through the cheque and Rs.1,00,000/- by cash. Whereas, when a person, who has borrowed Rs.1,75,000/-, failed to repay it, the possibility of advancing further loan is highly improbable.

5. The trial Court, on appreciating the defence and evidence let in by the complainant, has accepted the plea of the complainant that a sum of Rs.85,000/- was advanced to the accused in addition to the earlier loan of Rs.1,75,000/-, since the accused pleaded for loan to meet out his wife medical expenses. The issuance of post-dated cheque is admitted by the accused. The complainant has establish that the cheque was issued to discharge legally enforceable debt. With this conclusion, the trial Court has convicted the accused and sentenced him to undergo one year Rigorous Imprisonment and fine of Rs.5,000/- in default, to undergo one month Simple Imprisonment.

6. After paying the fine of Rs.5,000/-, the accused has preferred appeal before the District Court, Coimbatore. On re-appreciation of the evidence, the lower appellate Court has confirmed the finding of the trial Court. It held that having issued the cheque for Rs.3,50,000/- and failed to pay or reply the statutory notice, the appellant is guilty of committing offence under Section 138 of the Negotiable Instruments Act and confirmed the trial Court judgment. The defence that the money was advanced by the complainant only as financial assistance to run the tuition centre and dance class was not found in favour of the accused. Aggrieved by the dismissal of his appeal, the present criminal revision is filed.

7. Learned counsel appearing for the petitioner/accused would submit that the Courts below failed to note that while the

complainant himself has deposed that he advanced only Rs.1,75,000/- as loan, the cheque for Rs.3,50,000/- cannot be construed as an instrument given to discharge the legally enforceable debt. Further, the learned counsel would reiterate that the money advanced was only as partner to run tuition centre and dance class. If any loss incurred in a partnership firm, the other partner cannot be held liable for the money advanced. The cheque was given by the accused as security for the finance given by the complainant to run the tuition centre and dance class with a specific understanding to share the profit. Therefore, the ingredient of Section 138 of Negotiable Instruments Act will not get attracted.

8. On considering the submissions made by the learned counsel appearing for the petitioner and the material evidence available on record, this Court is unable to endorse the submission made by the revision petitioner. Ex.P1-cheque has been specifically issued for a sum of Rs.3,50,000/- in favour of the complainant. If the money was advanced by the complainant as a partner for the tuition centre and dance class, there is no necessity for the accused to issue cheque for Rs.3,50,000/-. Having issued the cheque to discharge the money borrowed, a new theory has been invented by the accused, which he has not even spelt out, when statutory notice was issued to him. Therefore, the Courts below have rightly held that the accused is liable for issuing cheque without sufficient fund.

9. The other point now canvassed by the learned counsel appearing for the petitioner is that the sentence of imprisonment for a term of one year Rigorous Imprisonment may be modified since the revision petitioner/accused is ready to pay the cheque amount as compensation in lieu of sentence. To this proposal the respondent is not present before this Court to say any comment.

10. After notice, the respondent has engaged a counsel by name Mr.R.Ashokan, but, he has not turned up, inspite of the matter been listed for final disposal on more than 2 occasions. Earlier when this matter was referred to Mediation Centre, the respondent did not attend the Mediation. Therefore, this Court is not in a position to consider the proposal of the petitioner as a term of compromise.

11. In the above facts and circumstances, this Court finds no merits in this revision to interfere with the findings of the Courts below, except modifying the period of imprisonment six months Simple Imprisonment, instead of one year Rigorous Imprisonment. The fine amount imposed by the trial Court shall remain unaltered.

12. Accordingly, this Criminal Revision Case is partly allowed. Punishment of one year Rigorous Imprisonment and Fine of Rs.5,000/- imposed on the petitioner/accused by the trial Court is modified as six months Simple Imprisonment. The fine amount already imposed by the trial Court is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Sessions Judge
cum Fast Track Court No.1, Coimbatore.

2.The Judicial Magistrate No.VI,
Coimbatore.

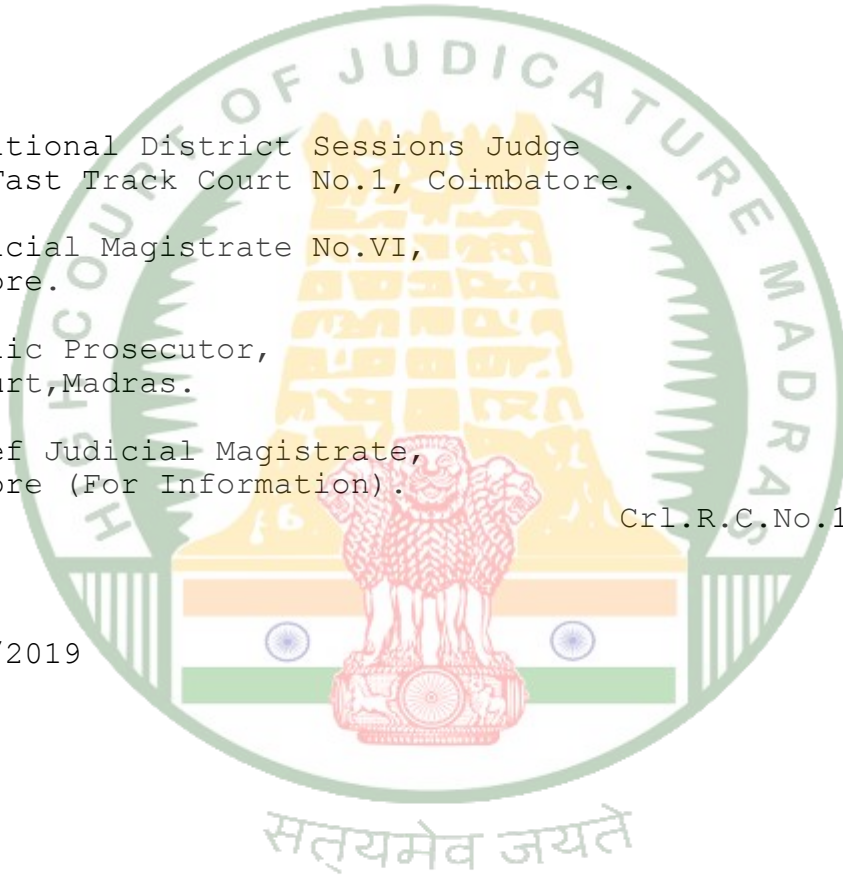
3.The Public Prosecutor,
High Court, Madras.

4.The Chief Judicial Magistrate,
Coimbatore (For Information).

Crl.R.C.No.1671 of 2011

BS (CO)

rrs 19/03/2019



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