

BAIL SLIP

The Revision Petitioner herein/Accused namely G.Sivagnanam, S/o.Ganesan, aged about 52 years was directed to be released on bail as per the order of this court dated 13.12.2011 passed in CrI.MP.NO.1 of 2011 in CrI.R.C.No.1758 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1758 of 2011

G.Sivagnanam ..Petitioner/Sole Accused

Vs

Raja ... Respondent/Defacto Complainant

Prayer:-

This Criminal Revision Case is filed under Sections 397 & 401 Cr.P.C., against the judgment passed by the learned District and Sessions Judge, Nagapattinam in Criminal Appeal No.2 of 2009 dated 11.10.2011 confirming the judgment of conviction made in C.C.No.395 of 2006 on the file of the learned Judicial Magistrate No.2, Mayiladuthurai convicting the revision petitioner under Section 138 r/w 142 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month, in which a sum of Rs.2,500/- shall be paid to the complainant being compensation under Section 357 (1) (b) of Cr.P.C.

For Petitioner : Mr.B.Babu Muthu Meeran

For Respondent : M/s.M.Jayanthi

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2.This Criminal Revision is directed against the concurrent findings of the Courts below, in a matter arising out of Section 138 of the Negotiable Instruments Act.

3.The short point agitated by the learned counsel for the petitioner/accused is that, mandatory requirement of causing statutory notice immediately after returning of cheque not been scrupulously complied by the respondent/complainant. Neither in the statutory notice, nor in the sworn statement and nor in the complaint filed before the Court, the complainant has mentioned the cheque number.

4.As far as the complaint is concerned, while filing the present Criminal Revision Case, the Registry has pointed out that the cheque number not mentioned. Only thereafter, the learned counsel for the respondent/complainant has taken back the complaint and re-presented it, on 08.01.2014, inserting the cheque number. Even while inserting the cheque number, instead of mentioning it as 221282, it has been written as 227282 in hand.

5.Therefore, the learned counsel for the petitioner canvassing the other merits of the case, which this Court was not convinced, would strongly harp on this point and sought for interference. In support of his submission, the learned counsel would also rely upon a judgment of this Court rendered in Mohamad Irfan vs. Velukannan (Crl.A.No.94 of 2014 dated 22.12.2016) wherein, it has been observed as follows:-

"37.Be that as it may, in the instant case, even though the Appellant/Complainant, at paragraphs 8 & 12, in the complaint, had mentioned the cheque number as '361868' and mentioned the cheque number incorrectly as '361838' in Ex.P3 - Notice, this Court is of the considered view that there is no mist or cloud or shroud or any manner of simmering doubt in regard to the language employed in 19 Section 138 of the Negotiable Instruments Act. Admittedly, notice will have to be read in entirety. In the present case, there was no correction notice communicated/issued on behalf of the Appellant/Complainant to the Respondent/Accused. Also, considering the fact that the supply of chickens by the Appellant/Complainant to the Respondent/Accused is a running transaction, the mistake that had occurred in Ex.P3 - Notice pertaining to the cheque number cannot be said to be an ancillary/ incidental or

irrelevant/immaterial one, because of the fact that the issuance of Cheque - Ex.P1 was not the only one transaction between the parties. Certainly, the incorrect mentioning of the cheque in Ex.P3 - Notice is not fulfilling the requirement under Section 138 (b) of the Negotiable Instruments Act. In as much as Ex.P3 - Notice is not in conformity with Ex.P1 - Cheque, as a logical corollary, the complaint filed by the Appellant/Complainant is per se not maintainable in Law"

6. Section 138 of the Negotiable Instruments Act, gives the cause of action to file a criminal complaint by the payee or the holder of the cheque, after causing notice in writing to the drawer of the cheque, within 30 days of the receipt of the information by him from the Bank regarding the return of the cheque as 'un-paid'.

7. In the present case, notice purported to have been given by the complainant in compliance of Section 138 of the Negotiable Instruments Act, is marked as Ex.P.4. In the notice, nowhere, the cheque number is mentioned. After receipt of the reply from the accused, the complainant has presented his complaint before the learned Judicial Magistrate No.1, Myailaduthurai on 22.12.2003. The complaint was returned by the Registry for the defect that the cheque number and account number not been furnished in the complaint. Thereafter, the cheque number has been inserted in paragraph No.2 of the complaint. Even while doing so, the correct cheque number not been mentioned but wrongly written as 227282 instead of 221282.

8. The Courts below have dealt with the error in mentioning the cheque number in complaint and condoned it as typographical error. However, there is no explanation for not mentioning the cheque number in the statutory notice. As far as under Section 138 of the Negotiable Instruments Act, is concerned, the cause of action arise only after causing statutory notice to the drawer of the cheque and after expiry of 15 days, from the receipt of the said notice. When there is an inherent and incurable defect in the statutory notice, no cause of action will arise.

9. Though, the Courts below have overlooked this fact, being an inherent legal defect under revisional jurisdiction, such infirmity or illegality of the courts below has to be rectified. When the statute specifically mandates, the payee or the holder of the cheque in due course to cause notice informing the return of cheque as 'unpaid', without mentioning the cheque number, the

material information necessary in the statutory notice gets omitted, so it makes the statutory notice as a invalid notice.

10.For the said reasons, the Criminal Revision Case is allowed. The finding of the Courts below holding the accused guilty for offence under Section 138 of the Negotiable Instruments Act is set aside. The bail bond, if any, shall stand cancelled. The fine amount, if any, paid shall be refunded to him.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The District and Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate No.2,
Mayiladuthurai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.M.Jayanthi, Advocate, S.R.No.23867

Cr1.R.C.No.1758 of 2011

SAI (CO)
CS/24/04/2019

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