

Bail Slip.

The Appellant/Accused namely R.Manikandan S/o. Ramachandran (in S.T.C.No.1507 of 2006) on the file of the Judicial Magistrate and cum Special Magistrate for Sandalwood offences, m Attur Salem District was directed to be released on bail by order of this Court dated 27.06.2011 and made in M.P. No. 1/2011 in Crl.R.C.No.845/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case Nos.845 & 1104 of 2011

R.Manikandan ... Petitioner in
Crl.R.C.No.845/2011

Vs

S672 Attur Agricultural Producers
Co-operative Marketing Society Ltd.,
No.65, Kamarajar Road,
Pudupettai, Attur. ... Respondent in Crl.R.C.No.845/2011

S672 Attur Agricultural Producers
Co-operative Marketing Society Ltd.,
Rep by its Secretary
No.65, Kamarajar Road,
Pudupettai, Attur. ... Petitioner in Crl.R.C.No.1104/2011

vs.

R.Manikandan ... Respondent in Crl.R.C.No.1104/2011

Prayer in Crl.R.C.No.845 of 2011:- This Criminal Revision is filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment dated 25.02.2011 passed in C.A.No.112 of 2010 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.1) Salem confirming the judgment dated 12.07.2010 in S.T.C.No.1507 of 2006 on the file of the learned Judicial Magistrate, No.2, Attur.

Prayer in CrI.R.C.No.1104 of 2011:- This Criminal Revision is filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment dated 12.07.2010 made in S.T.C.No.1507 of 2006 on the file of the learned Judicial Magistrate, No.2 - cum-Special Magistrate for sandalwood offences, Attur, Salem District in so far as it is against this petitioner and enhance the sentence as provided under the Code of Criminal Procedure.

In CrI.R.C.No.845 of 2011:-

For Petitioner : Mr.Sudermohan

For Respondent : Ms.Zeenath Begum

In CrI.R.C.No.1104 of 2011:-

For Petitioner : Ms.Zeenath Begum

For Respondent : Mr.Sudermohan

COMMON ORDER

These two revisions are directed against the judgment of the First Appellate Court confirming the conviction imposed on the accused holding him guilty for offence under Section 138 of the Negotiable Instruments Act. While the accused has preferred Criminal Revision Case No.845 of 2011, challenging the conviction and sentence, the complainant has preferred Criminal Revision Case No.1104 of 2011, seeking enhancement of conviction to the accused.

2.For the sake of convenience, the petitioner in CrI.R.C.No.845 of 2011 is referred as accused and the respondent is referred as complainant.

3.The brief facts, of the case is that, the Proprietor of Sri Iyyappa Traders, Mr.Manikandan, the accused in this case had participated in the auction of Turmeric conducted by the Attur Agricultural Producers Marketing Society. He was a successful bidder quoting Rs.4,03,666/- per quintal. He has lifted 190 bags, paid part sum towards the cost. He has failed to lift the remaining 3256 bags of Turmeric worth Rs.69,35,878/- which has forced the society, complainant to go for re-auction. As per the statement of account, the accused liable to pay balance sum of Rs.15 lakhs, for which, a cheque was given by the accused, to the society. When the cheque was presented for collection, it returned with the endorsement that 'payments stopped'. After serving statutory notice, complaint under Section 138 of the Negotiable Instruments Act, has been filed by the society.

4.The accused has defended the case on the ground that though he was successful bidder for 3256 bags of Turmeric worth Rs.69,35,878/-, the subject cheque was not issued by him to discharge any legally enforceable debt. For the Turmeric worth Rs.11,75,199/- he has already paid a sum of Rs.5,15,000/-, the cheque which was given as a security has been misused by the society by filling up for Rs.15 lakhs and therefore, the complaint is not maintainable.

5.The Courts below however, rejected the said defence and held the accused guilty for issuing cheque to discharge his liability but, failed to honour the same. The accused who was found guilty and convicted by both the Courts below, has preferred the present revision, on the ground that the accused during the course of cross examination of the complainant has dislodged the presumption though he was successful bidder in the auction, he has not taken delivery of the Turmeric and for the goods what he has taken delivery, he has substantially paid by way of cheque. The present cheque which was issued as a security has been presented without any liability for enforceable debt. Since, the society has also initiated civil proceedings, for recovery of money due to breach of contract, for the very same transaction, the cheque issued as security cannot be misused to initiate criminal prosecution.

6.The learned counsel for the respondent/complainant would submit that the complainant who has preferred revision for enhancement of punishment would submit that the complainant has established the case of legally enforceable debt not only by way of presumption, but also, through the documents such as statement of account maintained in the normal course of transaction. The accused having admitted the issuance of cheque and the business transaction, he has not placed any evidence to rebut the legal presumption caste upon him except vague situation during the cross examination and vague reply marked as Ex.B.1.

7.Further, pointing out the deposition of the accused admitting the liability and his own declaration in the Insolvency Petition about the debt of Rs.15 lakhs, to the society, the learned counsel for the complainant would submit that the Courts below were lenient in sentencing the accused for dishonouring cheque value of Rs.15 lakhs. Mere sentence to under go one year simple imprisonment and fine of Rs.2,000/- in default to undergo three months simple imprisonment is inadequate. The entire cheque amount ought to have been ordered as compensation payable to the complainant.

8.Heard the learned counsel appearing for both sides; perused the records, exhibits and depositions.

9.The courts below after considering the nature of the transaction between the accused and the complainant society, the exchange of notice coupled with statement of account relied by the complainant marked as Ex.A.12 had arrived at the conclusion that the cheque Ex.A.1 was issued by the accused to discharge legally enforceable debt. The contention of the accused that the cheque was given only as security and he does not owe Rs.15 lakhs to the society has been negated by the Courts below based on the records relied by the complainant.

10.No doubt, the accused through cross examination and in reply has denied the liability to shift the burden and discharge the presumption. But then, the complainant have positively proved the liability through the statement of account maintained by them, in the normal course of business. In addition, this Court is able to see from the deposition of the accused who has chosen to examine himself as D.W.1, in the cross examination admits that he has filed a debtor petition before the learned Subordinate Judge, Attur to declare himself as insolvent and in the statement of asset and the liability he has shown Rs.15 lakhs as liability he owe to the complainant. This portion of admission stares at the face of the accused. There is no explanation to this admission. Hence, this Court finds that the finding of the Courts below holding the accused/petitioner in CrI.R.C.No.841 of 2011 guilty of Section 138 of the Negotiable Instruments Act.

11.As far as the sentence is concerned, the material before this Court indicates that the society has also initiated civil proceedings for recovery of money. Further, the accused himself has sought intervention of the Court to declare him as insolvent and the said proceeding is pending.

12.In the light of the above facts, there is no reason to enhance sentence further. Therefore, both the Criminal revision cases viz., CrI.R.C.No.845 of 2011 preferred by the accused challenging the conviction and the sentence and CrI.R.C.No.1104 of 2011 preferred by the complainant seeking enhancement of sentence on the accused are dismissed. The judgment passed by the learned Additional District and Sessions Judge (Fast Track Court No.1) Salem in C.A.No.112 of 2010 dated 25.02.2011 is confirmed.

-s/d-
Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge
(Fast Track Court No.1) Salem.

2.The Judicial Magistrate, No.2 cum Special Magistrate for
Sandalwood Cases
Attur, Salem District.

3. The Superintendent of Police
Salem.

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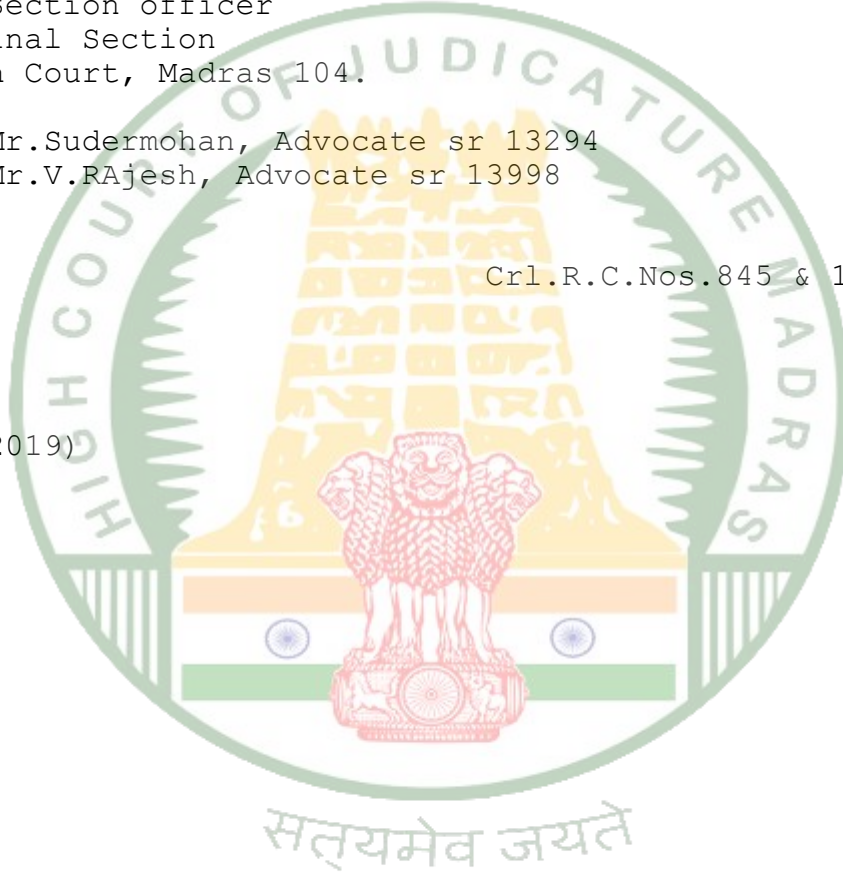
The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.Sudermohan, Advocate sr 13294

+1 CC to Mr.V.RAjesh, Advocate sr 13998

Crl.R.C.Nos.845 & 1104 of 2011

SV(CO)
SP(25/03/2019)



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