

Bail Slip

The Peititioner/Accused viz., P.Govindaraj, S/o.Periasamy Gounder was released on bail as per order of this Court dated 11/01/2012 in Crl.M.P No.1/12 in Crl.RC. No.14/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.03.2019	Pronounced on: 02.04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Case No.14 of 2012

P.Govindaraj,
S/o.Periasamy Gounder,
Proprietor of M/s.New Win Creation,
Sengalithottam,
Thonguttipalayam,
Andipalayam, Thirupur. ... Petitioner/Accused

/versus/

Mr.R.Vellaiangiri,
S/o.Ramasamy Gounder,
MMG Complex,
Bus Stop, Dharapuram Road,
Tirupur-4 ... Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 & 401 of Cr.P.C., call for the records and set aside the judgement in C.A.No.103 of 2011 dated 30.09.2011 passed by the Additional Sessions Judge cum Fast Track Court No.V, Tirupur and confirming the order in S.T.C.No.937 of 2007 dated 17.05.2011 on the file of the Judicial Magistrate No.2, Tirupur.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Mr.Sharath Chandran
for Mr.V.Raghavachari

O R D E R

The Revision Petitioner herein is the accused in S.T.C.No.937 of 2007, on the file of Judicial Magistrate No. II, Thirupur.

2. Alleging and asserting that the cheque issued by the Revision Petitioner for Rs.7,75,000/- to discharge the debt incurred by him on executing a pro-note, returned for the reason 'account closed'. The respondent herein has filed a criminal complaint under section 138 of the Negotiable Instruments Act.

3. The trial Court, on considering the evidence relied by the complainant and the defence taken by the accused held that the accused failed to discharge the reverse burden of presumption under Section 139 of Negotiable Instruments Act. So held him guilty and sentenced to undergo one year Simple Imprisonment and to pay compensation of Rs.7,75,000/- being the cheque amount.

4. Aggrieved by the conviction and sentence imposed by the trial Court, the accused preferred the Criminal Appeal No:103 of 2011 contending that the trial court has failed to appreciate the evidence relied by the defence. Though the accused has rebutted the presumption under section 139 of Negotiable Instruments Act by cross examining Subramaniam (PW-2), examining DW-1 and establishing that the said cheque was not given to the complainant to discharge any debt, but was given as a security to one Subramaniam son of Ponnusamy for a borrowing of Rs.50,000 against po-note. The debt was discharged subsequently in the presence of DW-1. Without returning the pro-note and cheque given as security, the same has been misused by Subramaniam through his friend Velliangiri a person unknown to the accused.

5. The Lower Appellate Court on the appreciation of the evidence reaffirmed the judgement of the trial Court and confirmed the guilt of the accused. However it modified the sentence of one year S.I. to 6 months Simple Imprisonment and confirm the compensation awarded.

6. In the Revision Petition, it is contended by the learned Counsel for the petitioner that the accused immediately on receiving the statutory notice from the complainant had replied, denying the liability. The execution of pro-note and the cheque in favour of the complainant were specifically denied in the reply notice (Ex.P-6). Further the accused has asserted that there was no transaction between the complainant and the accused. He borrowed Rs.50,000/- from Subramaniam son of Ponnusamy. For the said loan blank pro-note and cheque were given. Later, the loan was discharged in the presence of DW-1. Subramaniam who promised to return the blank pro-note and the

cheque failed to return it but had misused by him through his friend Velliayangiri the complainant. The reverse burden has been discharged through the reply notice Ex.P-6 and through the evidence of witness Umanathan (DW-1). The Courts below not properly appreciated these evidence. The Courts below ought to have dismissed the complaint since, the complainant has failed to prove beyond doubt that there was a legally enforceable debt and the cheque was given to discharge the said debt.

7. Heard the Learned Counsel for the Revision Petitioner and the Learned Counsel for the Respondent. Records perused.

8. The complainant, to prove his case has examined himself and one Subramaniam son of Ponnusamy as PW-1 and PW-2 respectively. The pro-note executed by the accused on 26.12.2005 promising to repay the loan with 1% interest per mensem is marked as Ex.P.1. In the said pro-note the accused has put two signatures one on the Revenue stamp and another below the Revenue stamp. He has also affixed his left thumb impression. Subramaniam son of Ponnusamy is the scribe to the pro-note. PW-2 Subramaniam S/o. Ponnusamy has been examined by the complainant to disprove the case of the accused. PW2 in his deposition has categorically said that on receiving loan of Rs.7 lakhs, the accused signed the pro-note and affixed his thumb impression in the pro-note (Ex.P-1) which he scribed. He has also denied the allegation that he had money transaction with the accused and the cheque was issued by the accused to him as security of that loan. Thus, the complainant had proved the enforceable debt against the complainant through Ex.P-1 pro-note as well as the fact that the cheque Ex.P-2 was issued to discharge the said debt. Since the accused has taken a defence that Ex.P-1 and Ex.P-2 were not given to the complainant but to one Subramaniam son of Ponnusamy, the said Subramaniam was also examined as PW-2 to disprove the said contention.

9. Thus from records, the contention of the revision petitioner that the complainant has not proved his case of legally enforceable debt and his source of income are found to be baseless.

10. In this regard, it is appropriate to refer the judgement of the Hon'ble Supreme Court rendered in, Kumar Exports Vs. Sharma Exports reported in 2009 (2) SCC 519 wherein, the honourable Supreme Court held as below:

"20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."

11. From the evidence Ex.P.1 and Ex.P.2, it is clear that a pro-note for Rs.7 Lakhs dated 26.12.2005 the subject cheque dated 01.12.2006 for Rs.7,75,000/- to discharge the said debt has been given by the accused in favour of Velliangiri. On its presentation on 02.12.2006, the cheque has been returned with the endorsement 'account closed'. After issuing the statutory notice dated 11.12.2006 and receipt of the reply notice dated 30.12.2006 from the accused denying the liability, the private complaint has been filed. The defence of the accused that the complainant is a stranger has been disproved in the cross-examination of DW-1. The execution of the pro-note and the cheque are proved through the evidence of PW-1 and PW-2. The defence taken by the accused that the pro-note and cheque were given as security for the loan availed from Subramaniam S/o.Ponnusamy also disproved by examining the said Subramaniam (PW.2) son of Ponnusamy by the complainant. The complainant has not only positively proved the fact that cheque Ex.P-2 was issued for discharge of debt, arose against the pro-note Ex.P.1, also he has disproved the defence claim that the cheque was not given to him but to one Subramaniam, S/o.Ponnusamy. The failure to produce Income Tax return or non-disclosure of the source of income does not carry any significance in this case. If at all, the complainant had failed to account his source of money it is for the Income Tax Department to take note of this failure and proceed against the complainant. On that score, the accused who borrowed money from the complainant cannot escape from the criminal liability under section 138 of Negotiable Instrument Act.

12. For the above said reason, the Criminal Revision Case is dismissed as devoid of merits.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

bsm

To,

1. The Additional Sessions Judge cum Fast Track Court No.V,
Tirupur.

2. The Judicial Magistrate No.2, Tirupur.

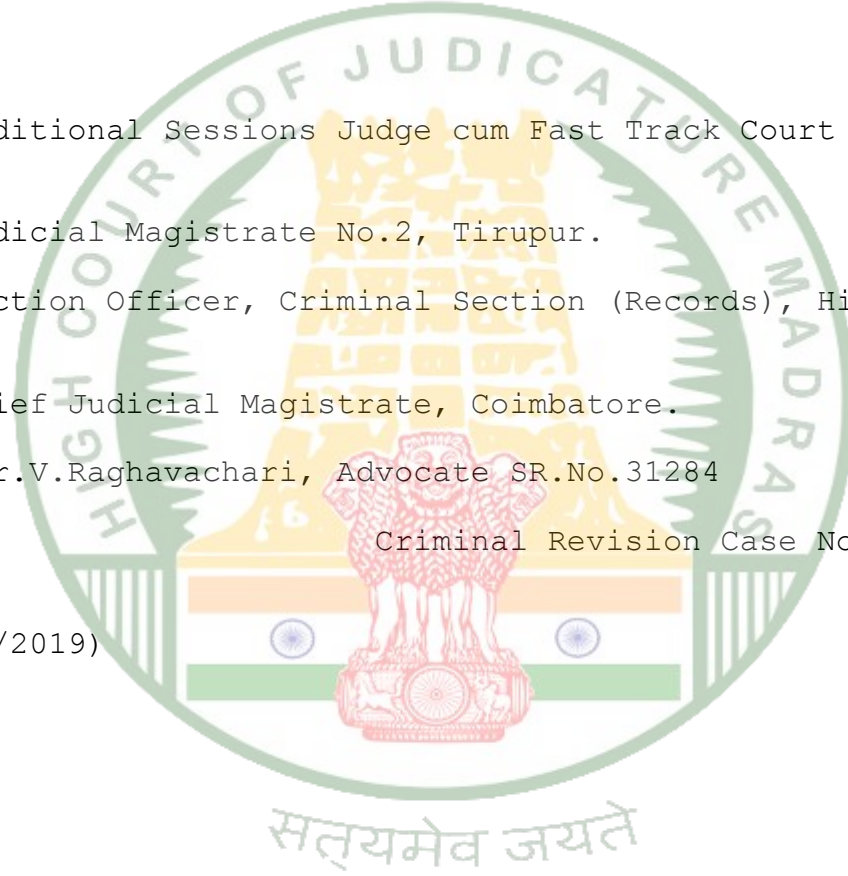
3. The Section Officer, Criminal Section (Records), High Court,
Madras.

4. The Chief Judicial Magistrate, Coimbatore.

+1cc to Mr.V.Raghavachari, Advocate SR.No.31284

Criminal Revision Case No.14 of 2012

NRL (CO)
GMY (24/05/2019)



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