Bail Slip

The Appellant/ Accused, namely Rajagopal S/o.Lakshminarayanan aged about 45 years old was directed to be released on bail as per order of this Court dated 16.03.2012 made in MP.NO.1/12 IN CRL RC.NO.328/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.328 of 2012
and M.P.No.1 of 2012

Rajagopal ... Petitioner/ Appellant/Accused

Vs.

Sudhakar ... Respondent/ Respondent/Complainant

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order of the learned Sessions Judge, Cuddalore in C.A.No.127 of 2010 dated 07.03.2012 confirming the order of the learned District Munsif cum Judicial Magistrate, Neyveli in S.T.C.No.1044 of 2009 dated 1.11.2010.

For Petitioner : Mr.R.Vijaya Raghavan
For Respondent : Mr.A.Arasu Ganesan

O R D E R

This Criminal Revision Case has been preferred by the petitioner against the order of the learned Sessions Judge, Cuddalore in C.A.No.127 of 2010 dated 07.03.2012, confirming the order of the learned District Munsif cum Judicial Magistrate, Neyveli in S.T.C.No.1044 of 2009 dated 1.11.2010.

2. Heard the learned counsel appearing for the revision petitioner and the learned counsel for the respondent.

3. The revision petition arises out of the judgment passed by the Courts below in the matter relating to the offence under Section 138 of Negotiable Instruments Act. The short points involved in this revision as canvassed by the

learned counsel for the revision petitioner is that, the complainant and the accused were having contractual relationship and they are known to each other and two contracts were given to the accused for the value of Rs.5,75,000/- and Rs.3,00,000/-. While the accused has paid Rs.4,75,000/- in total, further sum of Rs.4,00,000/- was due payable to the complainant. While so, to discharge the said liablity cheque for Rs.4,00,000/- dated 07.06.2009, was issued to the complainant. When it was presented for collection, it bounced back with an endorsement 'funds insufficiant'. After issuing statutory notice to the accused calling upon him to pay the cheque amount of Rs,4,00,000/-. Complaint was lodged before the trial Court, since the accused failed to pay the money but issued reply notice containing false allegations.

4. The prosecution has examined 3 witnesses, 9 documents were marked. The Trial Court held the accused guilty. Convicted and sentenced him to undergo Simple Imprisonment for a period one year and to pay a fine of Rs.5000/-; in default to undergo one month Simple Imprisonment. A sum of Rs.2,500/- from out of the fine amount was ordered as compensation payable to the complainant. Aggrieved by the said judgment, the accused has preferred the appeal before the Sessions Court, Cuddalore.

5. The Appellate Judge on considering the grounds of appeal has found that out of 13 receipts issued by the complainant from 01.11.2008 to 26.03.2009, which were marked as Ex.D.2 series during the cross-examination the complainant has admitted 3 of the receipts were issued by him towards the discharge of outstanding amount. Those three receipts are dated 15.01.2009, 20.01.2009 and 12.02.2009, for a total amount around Rs.5,60,770/-. Further, taking into consideration, the admission of the complainant that a sum of Rs.1,20,000/- was given to him by the accused withdrawing the same from ATM and another sum of Rs.20,000/- received on 22.01.2008, it calculated that the actual liability of the accused in the cheque under dispute is only Rs.1,42,800/-. However,observed this is a matter for reconcile amongst themselves. Since the accused issued a cheque for Rs.4,00,000/- and the same is dishonoured, he is liable for the act of dishonoring the cheque.

6. The learned counsel for the revision petitioner submits that under Section 138 of the Negotiable Instruments Act, criminality will arise only if the cheque issued for discharge of legally enforceable debt, is dishonoured. While the appellate Court after considering the complaint held that only Rs.1,42,800/- due payable to the complainant, a cheque which was issued as security being misused and filled up for excess amount by the holder of the cheque will not give him any right to initiate criminal prosecution under Section 138 of Negotiable Instruments Act.

7. The learned counsel for the respondent, per contra would submit that admittedly the cheque was issued for clearance of the debt of Rs.4,00,000/-. Since there was several transactions was between the complainant and the accused, for the payments made by the accused to discharge the loan, receipts were duly issued. The receipts were issued pertaining to the transaction under two contracts one for five lakhs and another for three lakhs. The trial Court rightly appreciated the documents including the receipts marked as Ex.D.2 series and disbelieve the case of the accused and held rightly that the cheque was issued to discharge the legally enforceable debt. Whereas, the appellate Court co-relating the cheque and the receipts admitted by the complainant has made a passing observation that the actual liability is only Rs.1,42,800/-. However, has rightly dismissed the appeal holding that the cheque for Rs.4,00,000/- is issued by the accused without sufficient fund and so he is liable to be punished under Section 138 of the Negotiable Instruments Act. The said passing observation of the appellate Court shall not have any bearing or will not shift the burden cast upon the accused under Section 139 of the Negotiable Instruments Act.

8. This Court is unable to accept the submission made by the respondent in this regard when Section 139 of the Negotiable Instruments Act cast a statutory presumption upon the drawer of the cheque. Reading the section 139,clearly indicates that if shall be presumed unless contrary is proved that the holder of the cheque received it for the discharge of debt in whole or in part of any debt or other liability. Therefore, presumption under Section 139 of the Negotiable Instruments Act will apply only if the cheque is towards whole or part of any debt. If the cheque amount reflects over and above, the liability presumption cannot be drawn under 139 of the Negotiable Instruments Act.

9. This is the case where the appellate Court has held that the actual debt and liability of the accused is only Rs.1,42,800/- having held so, the appellate Court cannot presume liability of Rs.4,00,000/-. By invoking Section 139 of N.I.Act, fixing liability on the accused for the amount over and above the enforceable debt is against the spirit of the law. In case of this nature, the complainant ought to have produced the statement of accounts and established the fact that there is a legally enforceable debt against the accused over and above to the tune of Rs.4,00,000/- or atleast four lakhs. So that to presume that this cheque was issued for the discharge the debt in whole or in part. The complainant has failed to establish the same. Contrarily the accused through Ex.D.2 series and through the admission of the complainant having proved the fact that the cheque for Rs.4 lakhs was not towards legally enforceable debt. So complaint under 138 of Negotiable Instruments Act will not sustain.

10. Therefore, the revision case is deserve to be allowed. Accordingly, the Criminal Revision Case stands allowed. The fine amount if any paid by the revision petitioner shall be refunded.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The District Munsif cum Judicial Magistrate, Neyveli

2.The Sessions Judge, Cuddalore.

3.The Chief Judicial Magistrate,Cuddalore(For informantion)

4.The Public Prosecutor, High Court ,Madras.

Copy to
The section officer,
Criminal Section,
High court Madras

+1cc to Mr.A.Arasu Ganesan , Advocate SR.No. 16755
+1cc to Mr.C.T.Mohan, Advocate SR.No. 17051

Crl.R.C.No.328 of 2012

A.SK(22/03/2019)