

BAIL SLIP

The Petitioner/Accused namely Mrs.L.Udayakumar, S/o.M.Lazer, was released on bail as per the Order of this Court dated 13/07/2012 in Crl.M.P.No.1 of 2012 in Crl.R.C No.677 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Crl.Rc.No.677 of 2012
and
Crl.M.P.No.1 of 2012

L.Udayakumar

... Petitioner

Vs

L.K.Krishnamoorthy

...Respondent

The Criminal Revision Case filed under Section 397 and 401 of Cr.P.C, to call for the records in C.A.No.121 of 2011 dated 04.01.2012 on the file of the learned V Additional Sessions Judge, Chennai, confirming the conviction and sentence imposed in C.C.No.13014 of 2008 dated 27.05.2011 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.Abraham Kingsley
-No Appearance

O R D E R

This Criminal Revision has been filed by the petitioner to call for the records in C.A.No.121 of 2011 dated 04.01.2012 on the file of the learned V Additional Sessions Judge, Chennai, confirming the conviction and sentence imposed in C.C.No.13014 of 2008 dated 27.05.2011 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner is the accused and the respondent is the complainant. The respondent/complainant filed a private complaint under section 200 Cr.P.C. against the revision

petitioner, before the learned Metropolitan Magistrate, which was taken on file in C.C.No.13014 of 2008, for the offence under sections 138 of Negotiable Instrument Act. The learned Magistrate, after full-fledged trial, found the revision petitioner/accused guilty for the offence under section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- as compensation to the petitioner/accused, in default, to undergo simple imprisonment for three months. Challenging the order of the trial Court, the revision petitioner/accused has filed the criminal appeal before the learned Sessions Judge, Chennai in C.A.No.121 of 2011. The learned Sessions Judge made over the case to the learned V Additional Sessions Judge, Chennai for disposal. The learned Sessions Judge, after hearing both sides, dismissed the appeal and confirmed the order passed by the learned Metropolitan Magistrate, Chennai.

3. Challenging the judgment dated 04.01.2012 in C.A.No.121 of 2011, the petitioner/accused filed the present revision before this Court.

4. The learned counsel for the petitioner would submit that the revision petitioner has borrowed a sum of Rs.1,00,000/- from the respondent/complainant and issued a cheque, the cheque is not that of the revision petitioner. The respondent has forged the cheque and filed a false case against the petitioner and also the signature is not that of the petitioner. The learned Magistrate and Additional Sessions Judge failed to consider the defence taken by the revision petitioner. Therefore, both the Courts below have failed to consider the fact and erroneously convicted the petitioner, which warrants interference of this Court.

5. Although, notice has been served on the respondent, there is no appearance on behalf of the respondent/complainant. Name has been printed in the cause list and there is no representation on behalf the respondent on several hearings. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. The case of the respondent/complainant is that the revision petitioner borrowed a sum of Rs.1,00,000/- on 10.12.20107 and promised him to repay the money within a month and on the same day the petitioner issued a post dated cheque. On 15.12.2007, the respondent presented the cheque before the Bank and the same was returned as ''Funds insufficient''. Therefore, the respondent issued statutory notice dated 22.12.2007 to the petitioner and the petitioner received the same. However, he has neither sent any reply nor repaid the

money. Therefore, the respondent filed a private complaint before the Metropolitan Magistrate, Chennai. After taking cognizance of the complaint, the respondent filed proof affidavit and also filed the cheque memo issued by the Bank, Statutory notice issued by him, and acknowledgement received from the revision petitioner. The learned Metropolitan Magistrate found that the case of the respondent has not been challenged by the revision petitioner. Therefore he found that the initial burden was proved by the respondent/complainant. No doubt the presumption under Section 139 of Negotiable Instruments Act is rebuttable presumption i.e. it is for the petitioner to rebut the presumption. In this case, admittedly, the petitioner has not rebutted the presumption in the manner known to law.

7. It is the settled proposition of law that once execution of the cheque is admitted and the signature found in the cheque is admitted, the Court can draw a statutory presumption that the cheque is issued for discharging the legally enforceable debt or liability, it is for the accused to rebut the presumption. No doubt, the said presumption is a rebuttable presumption. The accused need not rebut the presumption by direct evidence. He can very well rebut the presumption by preponderance of probabilities or probable defence or even otherwise through cross examination of the witnesses. The accused has to establish his defence and rebut the presumption.

8. Under these circumstances, this Court does not find any merit in the revision. The respondent has not appeared before this Court on several hearings, and the case is pending from the year 2012. Considering the facts and circumstances of the case, the revision petitioner is liable to pay the compensation of cheque amount Rs.1,00,000/- within a period of 30 days from the date of receipt of a copy of this order, in default, he is sentenced to undergo three months simple imprisonment.

9. With the above modification, this Criminal Revision is disposed of. Consequently, connected miscellaneous petition is closed.

rli

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Metropolitan Magistrate-V,
Egmore, Chennai.

2. The V Additional Sessions
Judge, Chennai.

3. The Chief Metropolitan Magistrate,
Egmore, Chennai. (For Informatin)

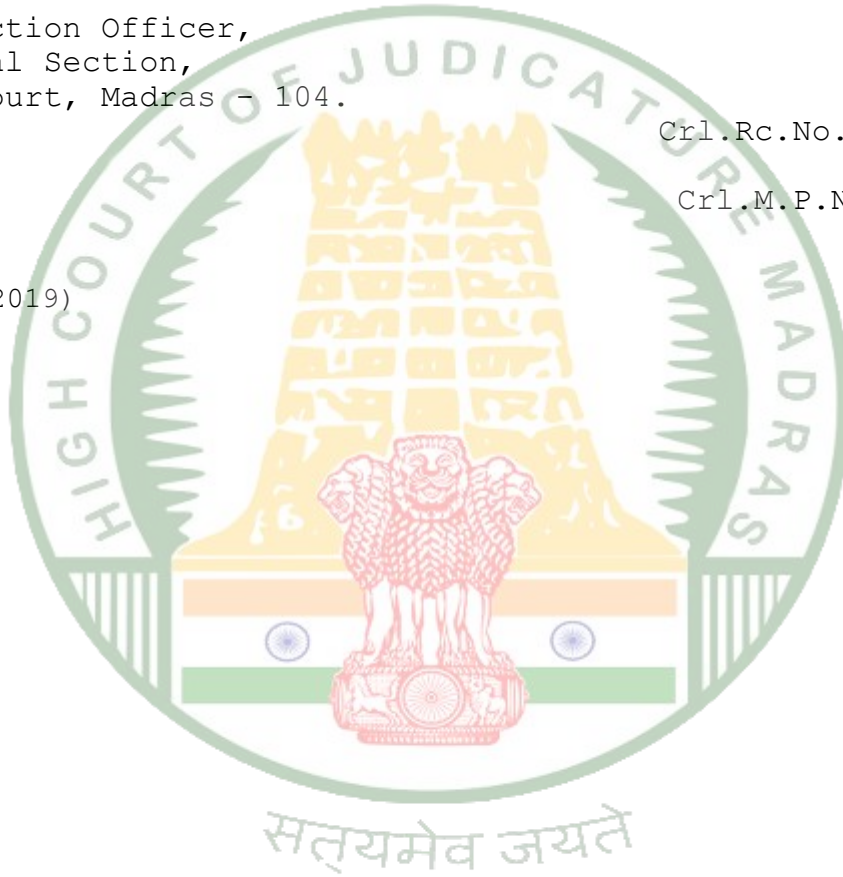
4. The Superintendent,
Central Prison, Puzhal,
Chennai.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

Crl.Rc.No.677 of 2012
and
Crl.M.P.No.1 of 2012

Kak(30/10/2019)



WEB COPY