

Bail Slip

Crl.RC.295/2013

The Appellant/Accused Viz., A.Sebastian, S/o.R.Arokiasamy was released on bail as per order of this court dt.7/3/2013 in MP.No.1/2013, in Crl.RC.295/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.295 of 2013

A.Sebastian Petitioner/Accused

vs

K.Sivaji Respondent/Complainant

Prayer Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records in judgment dated 13.12.2012 made in C.A.No.151 of 2012 on the file of IV Additional District and Sessions Court, Coimbatore confirming the judgment of Conviction dated 08.05.2012 made in C.C.No.326 of 2011, on the file of Judicial Magistrate No.II/Fast Track Court No.II, (Magistrial level), Coimbatore and set aside the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : No appearance

ORDER

The petitioner is the accused, the respondent is the defacto- complainant. The respondent filed a private complaint against the petitioner herein under Section 200 Cr.P.C., for the offence under Section 138 of Negotiable Instruments Act, before the Judicial Magistrate No-II, Fast Track Court, Magisterial Level, Coimbatore.

2 The learned Judicial Magistrate after an enquiry, found guilty of the accused for the offence under Section 138 of Negotiable Instrument Act and sentenced him to undergo 4 months simple imprisonment and to pay fine of Rs.2,000 in default to undergo one month simple imprisonment.

3 Challenging the said judgment passed by the learned Judicial Magistrate No.II, Fast Track Court at Magisterial level, Coimbatore the revision petitioner herein has filed an appeal before the learned Principal District and Sessions Judge, Coimbatore, in C.A.No.151 of 2012 the learned Principal District and Sessions Judge, Coimbatore, made over the appeal to the learned IV Additional District and Sessions Judge, Coimbatore for disposal. After hearing the appeal, the learned IV Additional District and Sessions Judge, Coimbatore dismissed the appeal and confirmed the judgment of the learned Judicial Magistrate No.II, Fast Track Court at Magisterial level, Coimbatore in C.C.No.326 of 2011 as against which, the petitioner filed a present criminal revision case before this court.

4 The learned counsel for the petitioner submitted that there is no legal debt is proved by the respondent/complainant and the revision petitioner has lost blank cheque, that was stolen by the respondent/complainant and he filed a complaint before the learned Judicial Magistrate, but there is no proof to show that the petitioner has issued a cheque in favour of the respondent to the legally enforceable debt in the absence of any such proof, the petitioner is not liable to be convicted. The Courts below has failed to consider the merits of the facts, which warrant interference by this Court.

5 Heard the learned counsel for the petitioner and perused the materials available on record. Today when the matter is taken up for consideration, there is no representation on behalf of the respondent.

6 The case of the prosecution is that the petitioner herein/accused borrowed a sum of Rs.2,50,000/- from the respondent/defacto complainant on 20.08.2009 and agreed to repay the said amount within a period of five month, in this regard, he has issued a cheque bearing No.740234 of Syndicate Bank dated 22.01.2010. When the cheque was presented, it was dishonoured on 22.01.2010 for the reason "Account Closed". Thereafter, a legal notice of demand was given, which was received by the accused on

09.02.2010. there was no reply for the said notice. Hence, the complaint.

7 The respondent/defacto complainant himself was examined as P.W.1 and also he produced a documents vize., Cheque, Return Memo, statutory notice, postal receipt, Acknowledgment card as Ex.P1 to P5, on the file of the defacto complainant DW1 to DW5 were examined and Ex.D1 to Ex.D9 were marked.

8 The revision petitioner/accused has not repaid the amount therefore the respondent was constrain to file a private complaint before the Judicial Magistrare No-II, Fast Track Court at Magisterial Level, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, the main defence taken by the revision petitioner is that he did not executed a cheque in favour of the respondent/complainant for discharging legally enforceable debt, the cheque was stolen.

9 On reading of the entire evidence that the signature found in the disputed cheque was admitted by the revision petitioner, once he admitted the signature found in the cheque the initial burden of the petitioner has been proved and the legal presumption that the cheque was issued for discharge legal enforceable debt. The statutory presumption is a rebuttable presumption.

10 Now, the trial Court found that the petitioner has not rebutted the presumption since the revision petitioner has taken the defence that the cheque was stolen. Admittedly, after receiving the statutory notice from the respondent he has not sent any reply for the lost cheque. Further, he has not filed any complaint before the police with regard to loss of cheque and also after receiving the statutory notice, the petitioner has not taken any legal remedy to get back the cheque,.

11 Under these circumstances, both the courts found that the defence taken by the revision petitioner, there is no subsequence in his defence. Therefore, the revision petitioner has not rebutted the statutory presumption.

12 This Court is a revisional Court, while exercising the revisional jurisdiction, this Court need not sit in the armchair of the appellate Court and revisit the entire evidence. However, this Court has to see as to whether there is any perversity in the appreciation of evidence while deciding the case by the Courts below. But at the same time while deciding the case this Court has to see whether the trial Court has properly appreciated the evidence.

13 Under these circumstances, this Court finds that there is no perversity in the Judgment passed by the trial Court, and this Court does not find any merit in this revision case. Accordingly, this present Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

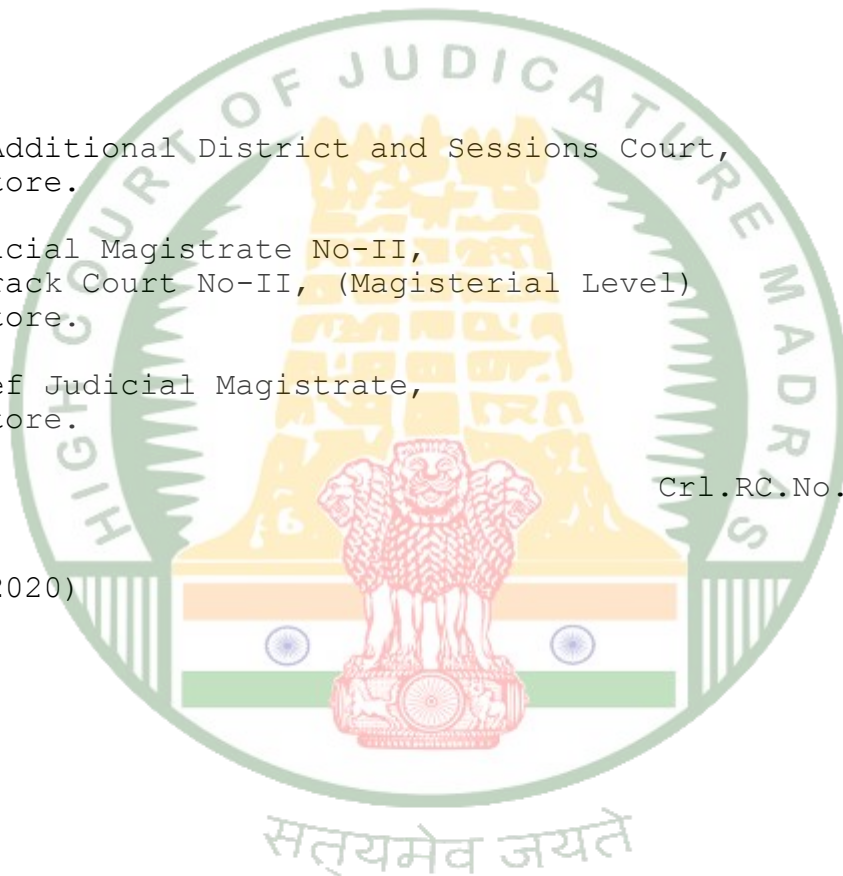
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To

- 1.The IV Additional District and Sessions Court,
Coimbatore.
- 2.The Judicial Magistrate No-II,
Fast Track Court No-II, (Magisterial Level)
Coimbatore.
- 3.The Chief Judicial Magistrate,
Coimbatore.

CrI.RC.No.295 of 2013

CA(CO)
CB(10/02/2020)



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