

Bail Slip

The Accused/Appellant namely A.Prabakaran was directed to be released on bail as per order of this court dated 27/03/2013 made in crl mp no.1/2013 in CrI.R.C.No.413/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Revision Case No.413 of 2013

A.Prabhakaran

Petitioner

Vs

1. A.Matheswaran

2. The State represented by
Public Prosecutor
Erode District

Respondents

Prayer: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C. to call for the records relating to the Judgment dated 10.12.2012 in C.A.No.155 of 2012 made by the Principal Sessions Judge, Erode confirming the Judgment dated 10.08.2012 in CC No.24 of 2012 passed by Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr. D.Balachandran

For Respondent : R1 - No appearance
R2 - Mr. T. Shunmugarajeswaran
Government Advocate
O R D E R

This Criminal Revision is directed against the concurrent findings of the Courts below.

2. The brief facts of the case is that the Revision Petitioner/Accused is running a business in the name and style of "APS Fabrics" and the 1st respondent /Complainant is running Textiles business in the name and style of "Kalaimahal Textile Screen Makers". Both of them are familiar to each other through their business transactions. On 10.08.2007, the Revision

petitioner/accused borrowed a sum of Rs.6,30,000/- as a loan from the 1st respondent/Complainant for his business purpose and issued 11 post dated cheques. On presentation, all the cheques were returned with an endorsement "Insufficient funds". The Statutory notice dated 25.02.2008 sent to the residence of the accused was received by him. In response to the notice, the accused has sent reply notice on 03.03.2008, instead of settling the loan amount. Hence, Private Complaint filed against the Revision Petitioner/accused for the offence under Section 138 of Negotiable Instruments Act.

3. The trial Court after taking into consideration the evidence adduced and the documents placed before it, has convicted the Revision Petitioner/ accused under Section 138 of Negotiable Instruments Act and sentenced him to undergo 6 months simple imprisonment and imposed a fine of Rs.5,000/- in default simple imprisonment for one month. Challenging the said Judgment, the Revision Petitioner/accused had preferred an appeal before the Principal District and Sessions Court, Erode. The lower Appellate Court confirmed the Judgment of the trial Court. Against which, the present Criminal Appeal is preferred.

4. Today when this Criminal Revision Case is taken up for hearing, there is no representation for the 1st respondent. Heard the Counsel for the Revision Petitioner.

5. The learned Counsel appearing for the Revision petitioner would submit, the Courts below have failed to appreciate the legal issues involved in this case, which render the complaint not maintainable.

6. The learned Counsel would submit that admittedly Matheswaran/the complainant, and Prabhakaran/the accused were carrying on trade in textiles screen prints. The complainant Matheswaran was running his business in the name and style of "Kalaimahal Textile Screen Makers", which is admittedly a partnership firm. The accused Prabhakaran was running a firm in the name and style of "APS Fabrics", which is a proprietorship firm. The subject cheques were issued by Prabhakaran on behalf of the "APS Fabrics" as proprietor. The Cheques were drawn in favour of Matheswaran in the individual name. The said Matheswaran/ the complainant has endorsed all the 11 cheques in favour of "Kalaimahal Textile Screen Makers" and the cheques were presented into the account of "Kalaimahal Textile Screen Makers". The intimation from the bank about the dishonour of the cheques was also given only to "Kalaimahal Textile Screen Makers" and not to Matheswaran. While so, the Statutory notice issued only on behalf of Matheswaran and not on behalf of the "Kalaimahal Textile Screen Makers", which is holder in due course. The complaint whereas lodged in the personal name of

Matheshwaran and not in the name of "Kalaimahal Textile Screen Makers".

7. The contention raised by the learned Counsel for the Revision Petitioner that the complaint is not maintainable is legally sustainable. At this juncture, this Court wants to extract the following Sections from the Negotiable Instruments Act.

Section 138 (b) of NI Act

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; (Emphasis added)

Section 7 of Negotiable Instruments Act defines payee as follows

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

Section 9 of NI Act defines Holder in due course

Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if (payable to order) before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

8. The admitted fact in this case as per the deposition of PW-1 complainant as well as the endorsement found in the subject cheque, which is marked as Ex.P.1 to Ex.P.11, the subject cheques were issued in favour of Matheswaran by Prabhakaran as Proprietor of "APS Fabrics". The Cheques have been endorsed in favour of "Kalaimahal Textile Screen Makers", by Matheshwaran thereby "Kalaimahal Textile Screen Makers" have become holder in due course as defined under Section 9 of Negotiable Instrument Act. However, the Statutory notice Ex.P.12 is issued by the Advocate Mr.M.N.Shanmugasundaram on behalf of Matheshwaran and

not on behalf of "Kalaimahal Textile Screen Makers", which is holder in due course. The complaint also been filed only in the name of Matheshwarran. After deriving the right over the cheque from Matheshwaran, this "Kalaimahal Textile Screen Makers" should have issued Statutory notice and should have initiated criminal prosecution through its representative. Unfortunately in this case, Matheshwaran being one of the Partners of "Kalaimahal Textile Screen Makers" had thought that he can in his individual capacity issue statutory notice and initiated criminal prosecution. It is not legally permissible as per Section 138 of Negotiable Instruments Act.

9. In the light of the above discussions, this Criminal Revision is allowed. The conviction and sentence imposed upon the Revision Petitioner by the trial Court and confirmed by the lower Appellate Court is hereby set aside and the Revision petitioner is acquitted. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be returned to the Revision Petitioner.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrn

To

- 1.The principal sessions Judge,
Erode.
- 2.The Judicial Magistrate
Fast Track Court No I,
Erode.
- 3.Do-Thro'the Chief Judicial Magistrate
Erode.
- 4.The Public Prosecutor,
Erode, Erode District
- 5.The Public Prosecutor,
High court, Madras.

+1cc to Mr.D.Balachandran Advocate SR.25576

Criminal Revision No.413 of 2013

EU(CO)

CB(23/04/2019)