

BAIL SLIP

The Petitioner/Accused Viz; S. Elango was released on bail in Miscellaneous Petition 1 of 2013 in CrI.RC.852/2013 order dated 05/07/2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.852 of 2013
and
CrI.M.P.No.1 of 2013

S.Elango ...Petitioner

-Vs-

M.Ravi ...Respondent

Criminal Revision Petition filed under Sections 397 read with Section 401 of Cr.P.C. as against the judgment of conviction and sentence dated 14.09.2012 in Criminal Appeal No.22 of 2012, on the file of the learned Principal District cum Sessions Judge, Krishnagiri, partly confirming the judgment dated 10.02.2012 of conviction and sentence in STC No.262 of 2011, on the file of the learned Judicial Magistrate-cum-Fast Track Court, Hosur.

For Petitioner : (No appearance)

Respondent died (been Certificate filed)

O R D E R

The revision petitioner is the accused and the respondent is the complainant. The respondent has filed a private complaint against the petitioner under Section 200 of Cr.P.C. for the offence under Section 138 of Negotiable Instrument Act (hereinafter referred to as 'NI Act') before the learned Judicial Magistrate, FTC, Hosur and the same was taken on file in S.T.C.No.262 of 2011. After full-fledged trial, the Magistrate found the petitioner/accused guilty for offence under Section 138 of NI Act and convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,10,000/- as compensation, in default, to undergo simple

imprisonment for a period of one month.

2. Challenging the said order passed by the learned Magistrate, the petitioner has filed appeal before the learned Principal District and Sessions Judge, Krishnagiri in C.A.No.22 of 2011. The learned Principal District and Sessions Judge, after hearing the arguments on both sides, confirmed the conviction and modified the sentence imposed by the learned Judicial Magistrate, Hosur, in S.T.C.No.262 of 2011, dated 10.02.2012.

3. Challenging the said judgment dated 14.09.2012 made in C.A.No.22 of 2012, passed by the learned Principal District and Sessions Judge, Krishnagiri, the petitioner/accused has filed the present revision before this Court.

4. Despite giving sufficient opportunities, the petitioner has not come forward to argue the revision and the revision is pending for more than six years. Hence, this Court is inclined to dispose of the revision on merits and in accordance with law.

5. It is seen from the records, the case of the complainant is that the petitioner and the respondent are friends. The petitioner had approached the respondent for hand loan of Rs.1,00,000/- and promised him to repay the same within a period of two months. The respondent paid a sum of Rs.1,00,000/- to the petitioner on 15.04.2009, for which, the petitioner issued a post-dated cheque bearing No.004012 drawn on Central Bank of India, Krishnagiri Branch. As per the direction of the petitioner, the respondent presented the said cheque on 14.06.2009 before the HDFC Bank Ltd., Hosur Branch for encashment and the same was returned as ''Funds Insufficient''. When the respondent approached the petitioner regarding return of cheque, again he promised to repay in the fourth week of August 2009. As per request of the petitioner, the respondent presented the cheque before the same Bank on 21.08.2009, the same was once again returned with an endorsement as ''Funds Insufficient''. Therefore, the respondent sent statutory notice through the Advocate to the petitioner on 10.09.2009. The petitioner has also received the notice on 17.09.2009 and he neither repaid the amount nor sent any reply. Hence, the respondent/complainant was constrained to file a private complaint against the petitioner before the learned Judicial Magistrate, Hosur in S.T.C.No.262 of 2011. Before the trial Court, during trial, in order to prove the case, the complainant examined himself as P.W.1 and marked 5 documents. On the side of the defence, no one was examined and no documentary evidence was

marked. The respondent proved the case and the learned Magistrate has also accepted the case of the respondent and convicted the petitioner. Though the petitioner filed the appeal before the Court of Sessions. The learned Sessions Judge has also confirmed the conviction and modified the sentence imposed on the petitioner. Both the Courts have appreciated the evidence rightly and dismissed the case.

6. On reading of the grounds of the revision filed by the petitioner, it is seen that the respondent has not proved the source to lend such a huge amount and except the returned cheque, no other document had been filed by the respondent. The respondent has not proved his case beyond reasonable doubt.

7. Perused the entire materials available on record. There is no representation on behalf of petitioner and it is seen from the records that the respondent died as early as on 22.04.2013, death certificate is also available in the case bundle.

8. It is the case of the respondent/complainant that the petitioner borrowed a sum of Rs.1,00,000/- as hand loan, for repaying the same, the petitioner issued a post-dated cheque. On his request, the respondent presented the cheque before the Bank for collection, which was returned as funds insufficient. Therefore, he had issued statutory notice to the petitioner. The same was received by the petitioner. But, he neither repaid the amount nor sent any reply.

9. The petitioner has not disputed the issuance of the cheque and also he has not denied the signature found in the cheque. On a perusal of the grounds of the petitioner, it is seen that the respondent has not proved his means to lend a money. Once the petitioner accepted the issuance of the cheque and not disputed the signature that is for himself to rebut the presumption that the cheque is not issued for legally enforceable debt. The petitioner has not disputed the relationship of the respondent. In the cross examination, the petitioner, admitted, the transaction between the petitioner and the respondent. Therefore, once the financial transaction is admitted and execution of the cheque is admitted, signature is not denied, the presumption that the cheque was issued to legally enforceable debt. It is for the petitioner to rebut the presumption and in this case, both the Courts have held that the petitioner has not rebutted the presumption and the cheque was issued only for legally enforceable debt.

10. A careful persual of entire evidence, this Court does not find that the petitioner has rebutted the statutory

presumption under Section 139 of NI Act and this Court does not find any perversity in the findings of the lower appellate Court. Since the lower appellate Court is the final Court of fact finding, and it has re-appreciated the entire evidence and concluded that the revision petitioner has committed the offence under Section 138 of NI Act.

11. While exercising the revisionary jurisdiction, this Court cannot exercise the power of the Appellate Court and re-appreciate the entire evidence when there is no perversity with the judgment of the Appellate Court in setting aside the case. Both the Courts have appreciated the evidence elaborately and discussed all the evidence and found that the revision petitioner guilty of the offence under Section 138 of NI Act. This Court does not find any reason to interfere with the judgments passed by the lower appellate Court and does not find any perversity in the judgment of conviction and sentence imposed on the petitioner and finds there is no merit in the revision.

12. In the result, this Criminal Revision Case is dismissed and judgment of conviction and sentence passed in C.A.No.22 of 2012 on the file of the learned principal District and Sessions Judge, Krishnagiri, dated 14.09.2012 is confirmed. Consequently, connected miscellaneous petition is closed. The Trial Court is directed to secure the custody of the accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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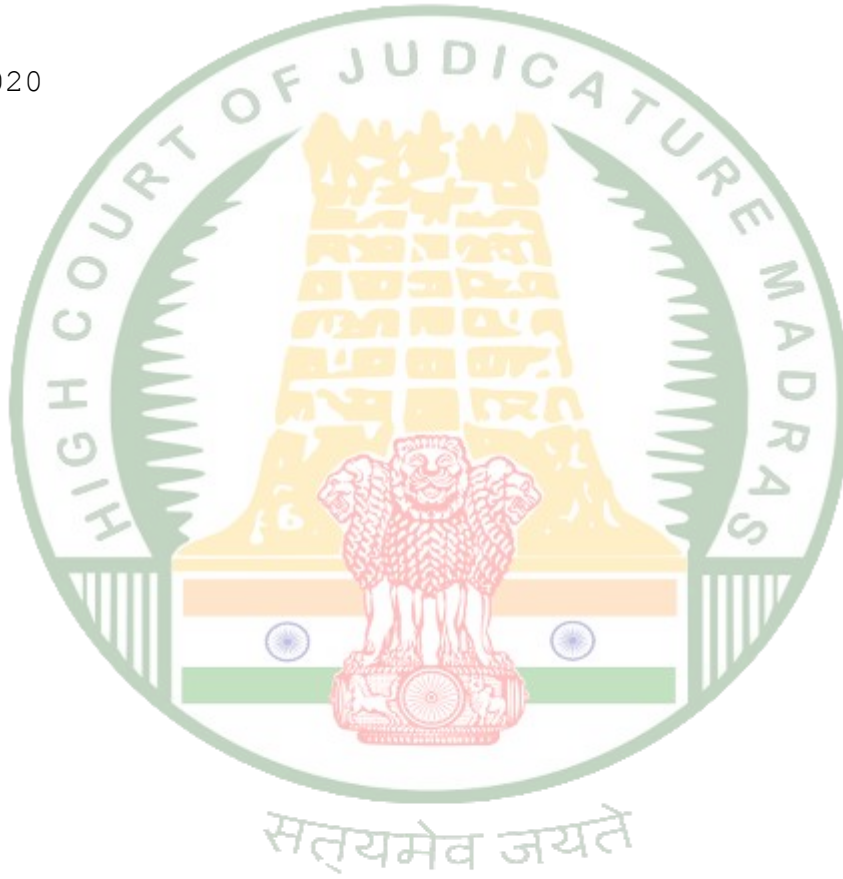
To

1. The Principal District-cum-Sessions Judge, Krishnagiri.

2. The Judicial Magistrate-cum-
Fast Track Court, Hosur.

CrI.R.C.No.852 of 2013
and
CrI.M.P.No.1 of 2013

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