

BAIL SLIP

That the Appellant/Accused Kareem Basha S/o.Abdul Rajeeth, 16/26, Khaderpe IV Street, Ambur, Vellore District was released on bail as per order of this Court dated 08/07/2013 and made in CrI.MP.No. 1/2013 in CrI.RC.No. 865 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.865 of 2013

Kareem Basha ...Petitioner

Vs.

M/s.Rameez Leathers
represented by its Proprietor A.Sheik Abdutlah
S/o.Abdul Raheim , 36, Alimsa Street,
B.P.Agraharam, Erode 638 005. ...Respondent

This Criminal Revision case has been filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records and set aside the order of conviction and sentence passed in C.A.No.146 of 2011 dated 08.02.2013 on the file of the learned II Additional Sessions Judge, Erode, confirming the conviction passed by the learned Chief Judicial Magistrate, Erode, in C.C.No.73 of 2011 and allow this revision and acquit the petitioner from the charges leveled against him.

For Petitioner: Mr.N.Saravanan

For Respondent: Ms.Shase

ORDER

The criminal revision has been filed against the concurrent judgment of conviction made by the Courts below for the offence under Section 138 of Negotiable Instruments Act (in short 'NI Act').

2 The petitioner is accused and respondent is complainant. The respondent filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence under Section 138 of Negotiable Instruments Act, before the learned Chief Judicial Magistrate, Erode, which was taken on file in C.C.No.73 of 2011. The learned Magistrate, after trial,

found the petitioner/accused guilty for the offence under Section 138 of NI Act and hence by judgment dated 26.09.2011, convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a sum of Rs.7,27,169/- as compensation to the respondent/complainant, in default, to undergo simple imprisonment for a further period of two months. Aggrieved against the same, the petitioner has preferred an appeal before the learned II Additional District Sessions Judge, Erode. The learned Sessions Judge, after hearing both the parties, by judgment dated 08.02.2013, dismissed the appeal and confirmed the conviction and sentence made by the trial Court, against which, present revision has been filed.

3 The learned counsel for the petitioner would submit that the accused has purchased goods for a sum of Rs.12,27,169/- from the respondent/complainant and paid Rs.5,00,000/- by cash and returned the goods worth about Rs.7,27,169/-, which was also received by the respondent. Further the respondent issued a cheque towards security purpose and the respondent/complainant used the same for filing this complaint. Even, in the reply notice given by the petitioner/accused he has clearly stated the above facts and suggestion was also put to that effect during cross examination of P.W.1. The respondent complainant has not proved his case and also he failed to prove the fact that on the date of presentation of cheque for collection, there was legally enforceable debt to be paid by the petitioner. The trial Court has failed to consider the above facts and convicted the petitioner and the lower appellate Court has also without appreciating the above facts has simply confirmed the judgment of the trial Court, which warrants interference.

4 The learned counsel appearing for the respondent would submit that on 11.08.2007, the petitioner had purchased goods worth about Rs.12,27,169/- and paid Rs.5,00,000/- by cash for the remaining amount he has issued a cheque dated 15.01.2008 drawn on Indian Bank, Ambur Branch, Erode, in favour of the respondent. When the respondent presented the cheque for encashment, the same was returned and the return memo was marked as Ex.P2. Hence the respondent/complainant issued a legal notice/Ex.P3 on 06.05.2008 and the same was received by the accused on 08.05.2008, for which the petitioner/accused has sent reply denying the liability. The petitioner/accused has admitted the transaction between the petitioner and the respondent and he only stated that he returned goods worth about Rs.7,27,169 has been returned, for which, no oral or documentary evidence was produced. The trial Court after considering all the materials placed on record and the arguments advanced on either side had rightly come to the conclusion that the petitioner found guilty of offence under Section 138 of NI Act and the lower appellate Court also confirmed the conviction.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 The petitioner filed this revision against the concurrent judgment of conviction made by both the Courts below. The petitioner/accused admitted his signature and execution of cheque. He also admitted that he purchased the goods from the respondent for a sum of Rs.12,27,169/- and paid Rs.5,00,000/- and only contended that he returned the goods worth Rs.7,27,169/- and there is no due payable to the respondent. It is seen from the records that to prove the defence taken by the petitioner/accused, the accused has examined three witnesses, but, nothing was elicited from the witnesses proving the stand of the petitioner/accused. Under these circumstances, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioner need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or through cross examining the witnesses. In this case, on reading of the entire materials placed on record, it reveal that the petitioner/accused has failed to rebut the presumption drawn in favour of the respondent/complainant. This Court does not find any perversity in the judgment of conviction of both the Courts below and there is no merit and substance in the revision case.

7 In the result, the criminal revision case is dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge, Erode.
2. The Chief Judicial Magistrate, Erode.
3. The Judicial Magistrate, Erode.

+lcc to Mr.N.Saravanan, Advocate, S.R.No. 71831

+lcc to Mr.M.Guruprasad, Advocate, S.R.No. 72211

Cr1.R.C.No.865 of 2013

BR(CO)

GN(02/01/2020)