

BAIL SLIP

The Petitioner/Accused namely K.Manoharan, S/o.Kaliappan, male, aged about 40/18 was directed to be released on bail as per order of this court dated 28.02.2018 in CrI.M.P.No.2967 of 2018 in CrI.R.C.No.268 of 2018 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.268 of 2018

K.Manoharan

... Petitioner/
Respondent/Accused

Vs

D.Amirtha Raj

... Respondent/
Appellant/Complainant

PRAYER: Criminal Revision Case filed under Article 397 r/w 401 of Criminal Procedure Code to set aside the judgment and conviction dated made in C.A.No.152 of 2017 on the file of the III Additional District and Sessions Judge, Coimbatore dated 18.01.2018 reversing the judgment dated 18.11.2010 made in C.C.No.743 of 2017 on the file of Judicial Magistrate No.II, Coimbatore and acquit the petitioner.

For Petitioner	: Mr.M.N.Balakrishnan
For Respondent	: Mr.OM.Sairam

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. the judgment and conviction dated 18.01.2018 in C.A.No.152 of 2017 on the file of the III Additional District and Sessions Judge, Coimbatore dated 18.01.2018 reversing the judgment dated 18.11.2010 made in C.C.No.743 of 2017 on the file of Judicial Magistrate No.II, Coimbatore and acquit the petitioner.

2. The petitioner is an accused and respondent is the complainant. The respondent has filed a private complaint for the offence under Section 200 of Cr.P.C. against the petitioner for the offence under Section 138 of Negotiable Instruments Act,

before the learned Judicial Magistrate No.II, Coimbatore, which was taken on file in C.C.No.743 of 2017. The learned Magistrate, after trial found that the petitioner/accused not guilty for the offence under Section 138 of NI Act and by judgment dated 18.11.2010, acquitted the petitioner/accused. The respondent/complainant has preferred an appeal before the Principal Sessions Judge, Coimbatore in C.A.No.152 of 2017. The learned III Additional District and Sessions Judge, after hearing both parties found that the respondent/accused guilty for the offence under Section 138 of NI Act and by judgment dated 18.01.2018 allowed the appeal and convicted the petitioner/accused and sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs.15,50,000/-, out of which Rs.15,00,000/- to be paid to the appellant/complainant within 2 months, in default, to undergo simple imprisonment for a further period of 6 months. Aggrieved against the same, the petitioner/accused has filed the present Criminal Revision Case before this Court.

3.The learned counsel for the petitioner would submit that there were no money transactions between the petitioner and the respondent/complainant did not obtain any document like promissory note or other documents and the petitioner issued a cheque to the respondent as a security for the loan borrowed by one Dhanapal. After repayment of the amount, the respondent/complainant had misused the cheque. He further submitted that absolutely, there is no material to show that the transaction between the petitioner/accused and the respondent/complainant. The trial Court had rightly come to the conclusion that the petitioner is found not guilty for the offence under Section 138 of Negotiable Instrument Act and the Lower Appellate Court has failed to consider the statutory presumption Sections 118 and 139 of NI Act, convicted the petitioner/accused.

4. The learned counsel for the respondent would submit that the respondent knows the petitioner for several years and the petitioner had borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) for his business needs on 13.03.2007 promising to repay the same within 3 months. When the respondent/complainant asked for repayment, the petitioner/accused issued the cheque dated 20.06.2007 bearing No.207498 for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only). The respondent/complainant issued the cheque when presented for collection on 20.06.2007 through appellant banker, the same was returned as "Insufficient Funds". Hence, the respondent/complainant issued a legal notice, but, the petitioner/accused did not send any reply notice. Therefore, the respondent has filed a private complaint. The respondent and the petitioner and Dhanapal are also examined.

5.The learned counsel for the respondent would further submit that the petitioner admitted the signature in the Cheque,

during his cross examination, the petitioner has admitted the execution of cheque which leads to presumption under Section 139 of Negotiable Instrument Act and the presumption had not been rebutted by the petitioner.

6. Heard the learned counsel on either side and perusal of the materials available on records.

7. The case of the respondent/complainant on 13.03.2007, the revision petitioner has borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) on promising to repay the same within 3 months, when the respondent asked for repayment, the petitioner issued the cheque dated 20.06.2007, bearing No.207498 for a sum of Rs.10,00,000/- drawn on Union Bank of India, Thudiyalur Branch, Coimbatore. The said cheque, when presented for collection on 20.06.2007, was returned with an endorsement "Insufficient funds" on 21.06.2007. So, after receiving return memo from the bank, the respondent/complainant issued statutory notice dated 26.06.2007, to the revision petitioner/accused has also received the said notice on 27.06.2007, neither he repaid the amount nor reply the same. Therefore, he filed a private complaint before the Magistrate, under Section 138 of Negotiable Instruments Act and 255 (i) Cr.P.C. Before the Magistrate he was examined as P.W.1 and cheque was marked as document and the respondent/complainant and other two witnesses were examined and marked three documents. After considering the oral and documentary evidence though the Magistrate dismissed the complaint, and against the respondent complainant filed an appeal before the learned III Additional District and Sessions Judge, Coimbatore, reversing the orders passed by the Magistrate and allowed the appeal. The learned counsel for the petitioner stated that on the date of borrowal no supporting documents were obtained by the respondent the petitioner gave the cheque only for the security purpose to one Dhanapal not to the respondent. On the other hand, issuance of cheque has been admitted, thereby giving rise to presumption under Sections 118 and Section 139 of Negotiable Instruments Act and the petitioner had failed to probalise his defense, which the learned Magistrate has failed to note. As could be seen from the evidence, the debt has not been discharged the subject cheque has been dishonored. The petitioner/accused has not filed any reply to the statutory notice to prove his defence.

8. Therefore under these circumstances, once the respondent/complainant proves that the cheque was executed by the petitioner/accused and there is a statutory presumption that the cheque issued only for legally enforceable debt or liabilities. It is for the petitioner/accused has to rebut the presumption that the cheque has not been issued to discharge

legally enforceable debt or liability.

9.On reading of the entire evidence that though the petitioner admitted the signature in the cheque but he has not produced any document to show that the cheque was issued to one Dhanapal and not to respondent. Therefore under these circumstances both the Courts have rightly drawn the statutory presumption that the cheque was issued for legally enforceable debt and petitioner/accused has not rebutted the presumption in the manner known to law. This Court does not find perversity in the appreciation of evidence while deciding the case by the appellate Court. Further there is no merits in this revision case.

10.Accordingly this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.II,
Coimbatore.
3. Do Through The Chief Judicial Magistrate,
Coimbatore District.
4. The Judicial Magistrate,
Fast Track Court, (Magistrate Level)
Alandur, Chennai.
5. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.24644
+1cc to Mr.S.T.Raja, Advocate, S.R.No.24499

CrI.R.C.No.268 of 2018

NR(CO)
CS/09/10/2019