

BAIL SLIP

The Petitioner/Accused namely T.Triloka Sundar, S/o.Thangamuthu, aged about 42 years was directed to released on bail as per the order of this Court dated 11/01/2018 made in CrI.M.P.Nos. 208 & 209 of 2018 in CrI.RC.No. 34 of 2018 on the file of this Court WP.No. 12/02/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.34 of 2018

T.Triloka Sundar ... Petitioner/Accused

vs.

Mahaveer Prasad Rathi ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C, against the judgment in C.A.No.231 of 2017 on the file of the learned Principal Sessions Judge, Erode, dated 05.12.2017 confirming the conviction and sentence passed by the learned Judicial Magistrate (Fast Track Court No.1), Erode in S.T.C.No.49 of 2017 dated 07.08.2017.

For Petitioner : Mr.S.Kaithamalai Kumaran

For respondent : Mr.J.Titus Enock

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 Judicial Magistrate (Fast Track Court No.1), Erode, which was taken on file in S.T.C.No.49 of 2017. The learned Magistrate, after trial, found the petitioner/accused guilty for the offence under Section 138 of NI Act and hence by judgment

dated 07.08.2017, convicted and sentenced to undergo 6 months simple imprisonment and to pay a compensation of Rs.5,00,000/-, in default, to undergo simple imprisonment for a further period of one month. Aggrieved against the same, the petitioner has preferred an appeal before the learned Principal Sessions Judge, Erode. The learned Sessions Judge, after hearing both the parties, by judgment dated 05.12.2017, 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 there was money transactions between the petitioner and the respondent and the petitioner issued several cheques to the respondent towards settling the dues. The respondent/complainant used one of those cheques for filing this complaint. As per Section 28 of Income Tax Act, if any amount exceeds Rs.20,000/- it should be reflected in the statement of Income Tax and in this case no such document was filed. The petitioner was convicted only based on the presumption and hence is liable to be dismissed.

4 The learned counsel appearing for the respondent would submit that the petitioner had borrowed a sum of Rs.5,00,000/- for his urgent business needs, and on demand issued a cheque bearing No.127838 dated 01.06.2016, for a sum of Rs.5,00,000/-, towards discharging the liability. The respondent/complaint, when presented the cheque for encashment, the same was returned as "funds insufficient". Hence the respondent/complainant issued a legal notice, for which the petitioner/accused did not send any reply and therefore the respondent has filed a private complaint. 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 there was money transaction and several cheques had been issued towards settling the dues. 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 probable defence 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 order 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

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate
(Fast Track Court No.1), Erode.

2. The Principal Sessions Judge,
Erode.

3. The Chief Judicial Magistrate, Erode
(For Information).

+1cc to Mr.S.Kaithamalai Kumar, Advocate, S.R.No. 23718

+1cc to Mr.J.Titus Enock, Advocate, S.R.No. 23784

Cr1.R.C.No.34 of 2018

SAI(CO)
GN(21/01/2020)