BAIL SLIP

The Petitioners/Accused were directed to be released on bail as per the order of this Court dated 04.09.2018 made in CMP No.6128,6131 and 8608/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.509, 511 & 744 of 2018 and
Crl.M.P.No.3079 of 2019

1.M/s.Premier Energy & Infrastructure Ltd.,
(PEIL) rep. by its Managing Director,
M.Narayanamurthy
Now at Tangy Apartments No.34,
P.V.Cherian Crescent Road,
Egmore, Chennai 600 008.
2.M.Narayanamurthy
3.A.Sriram
4.T.R.Murali ...Petitioners 1 to 4 in CRL R.C.No.509/18

5.Vikram Mankal
6.K.N.Narayanan
7.Ramakrishnan Rangaswami
8.Malka Komaraiah ...Petitioners 1 to 4 in CRL R.C.No.511/18

9.Krishnan Subramanian ... Sole Petitioner in CRL R.C.No.744/18

-Vs-

S.Srinivasan ...Respondent in all the RCs

Prayer in all the Criminal Revisions: These Criminal Revision cases are filed under Sections 397 read with Section 401 of Cr.P.C. to call for records pertaining to the order dated 28.03.2018 made in C.A.No.25 of 2017 passed by the learned I Additional Sessions Judge, Tiruvallur and set aside the same and consequently upheld and confirm the order dated 20.01.2017 passed by the learned Fast Track Court (Magisterial Level), Tiruvallur in S.T.C.No.6 of 2016 and acquit the petitioners from the charges under Section 138 of Negotiable Instruments Act.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel for M/s.M.Mohammed Rafi in Crl.R.C.No.509/2018

: Mr.T.Mohan for M/s.M.Murali in Crl.R.C.No.511/2018

: Mr.B.Kumar, Senior Counsel for Mr.S.Senthil in Cr.R.C.No.744/2018

For Respondent : Mr.I.S.Subramaniam, Senior Counsel & Mr.A.Ramesh, Senior Counsel for Mr.C.Arunkumar - in all the Revisions

COMMON ORDER

The petitioners are accused and respondent is complainant in all the revision cases. The respondent/complainant has filed a private complaints under Section 200 Cr.P.C. against the petitioners for the offence under Section 138 of Negotiable Instruments Act (in short "NI Act"), which was taken on file in S.T.C.No.6 of 2016 by the learned Judicial Magistrate, Fast Track Court at Magistrate Level, Tiruvallur. The learned Magistrate, after trial found the accused not guilty of offence punishable under Section 138 of NI Act and hence by judgment dated 20.01.2017 acquitted all the petitioners/accused, against which the respondent/complainant had filed an appeal before the learned First Additional Sessions Judge, Tiruvallur, in C.A.No.25 of 2017. The learned Sessions Judge, after adverting to the materials placed on record and after hearing both the parties, by judgment dated 28.03.2018, set aside the judgment of acquittal made by the trial Court and convicted all the appellants and sentenced the petitioners/accused 2 to 9 to undergo simple imprisonment for one year and A1 and A9 were directed to pay Rs.10.00 Crores to the respondent/complainant as compensation, in default, A2 to A9 sentenced to undergo simple imprisonment for one month. Aggrieved against the reversal judgment of conviction, all the petitioners/A1 to A9 are before this Court with the present criminal revision cases.

2 The case of the respondent/complainant is that he and his wife promoted a Company, viz., M/s.EMAS Engineers and Contractors Pvt. Ltd., (in short "EMAS") owning 100% of shares with them. In 2009, one M/s.Shriram Auto Finance had invested money with them and acquired 50.1% shares of EMAS and later it

was acquired by 1st petitioner Company. Due to bad financial condition of EMAS, a MoU dated 18.03.2015 was entered into between the complainant and the 1st petitioner Company and subsequently another MoU dated 25.04.2015 was entered into between the same parties, wherein, it was agreed by the first petitioner/A1 to merge EMAS with A1/Company by buying the remaining shares 49.9% of EMAS which has been owned by the respondent/complainant and a cheque for Rs.10.00 Crores dated 30.09.2015 has been issued by the first petitioner Company towards part of consideration of the purchase and there was personal guarantee and corporate guarantees also given to the complainant. The respondent/complainant presented the cheque dated 30.09.2015 and the same was dishonoured as "payment stopped by the Drawer" and hence the complainant issued statutory notice, for which, the accused had replied with false denials. Therefore, the complainant had filed the present complaint before the learned Judicial Magistrate, Fast Track Court at Magistrate Level, Tiruvallur.

3 The learned Senior Counsel appearing for the petitioners in Crl.R.C.No.509 of 2018 has raised an additional ground of jurisdictional issue stating that as per Section 378 (4) appeal against order of acquittal passed by the Magistrate would lie only before the High Court and the Sessions Court does not have jurisdiction to try the appeal. Reading of the above provision would show that it is clear that the power to grant special leave for an appeal against acquittal lies only with the High Court under Section 378(4) of Cr.P.C and the Session Court cannot take the appeal on file without the special leave being granted. According to the learned Senior Counsel for the petitioners/accused, only if the merger has taken place or the shares of 49.9% transferred to the first petitioner/Company then the petitioners/accused are liable to pay the amount as agreed in the MoU, now neither merger has taken place nor the shares 49.9% has been transferred to 1st petitioner/Company. On the date of presentation of cheque for collection by the complainant, the shares of 49.9% was still in the hands of the complainant. Therefore the respondent is not entitled to present the Cheque for Rs.10.00 Crores issued by the first petitioner/A1 and on the date of presentation of the cheque for collection, there is no legally enforceable debt. Further more, the first petitioner has sent a communication stating that due to financial crisis, it could not act upon the MoU and could not pay the amount and requested not to present the cheque for collection. Despite receiving the above communication, the respondent has presented the cheque for collection and got bounced and filed private complaint, which is against the criminal law. The respondent/complainant has also taken part in EMAS as Advisor. The dispute between the parties may amount to civil liability and not the criminal liability and the complainant cannot file a

complaint against the petitioners for the offence under Section 138 of Negotiable Instrument Act, which is not legally tenable. The learned Senior Counsel in support of his contentions has relied on decision of this Court reported in MANU/TN/0880/2016 in a batch of Criminal Appeals in the case of S.Ganapathy vs. N.Senthilvel and catena of decisions of the Hon'ble Supreme Court, which are stated hereunder:

1. (2009) 10 SCC 48 (K.K.Abuja vs. V.K.Vora and another)
2. (1998) 3 SCC 249 (Modi Cements Ltd., vs. Kuchil Kumar Nandi
3. (2001) 6 SCC 16 (Hiten P Dala vs. Bratindranath Baneerjee)
4. (2001)8 SCC 458 (K.N.Beena) vs. Muniyappan & Nar)
5. (2002) 1 SCC 234 (M.M.T.C. Limited & Nar vs. Medchl Chemicals and Pharma)
6. (2004) 2 SCC 235 (Goa Plasts Ltd vs. Chco Ursula D'souza)
7. (2012)13 SCC 375 (Laxmi Dyechem vs. State)
8. (2015) 8 SCC 378 (T.Vasanth Kumar vs. Vijaya Kumari)

4 The learned counsel appearing for the petitioners in Crl.R.C.No.511 and 744 of 2018 has adopted the above contentions raised by the learned Senior Counsel and in addition to that he contended that the petitioners are not signing authority and they are no way connected with the alleged issuance of cheque. They have not participated in day today affairs of the Company. The respondent/complainant has erroneously implicated the petitioners and the lower appellate Court has also failed to consider that the petitioners are not involved in day to day affairs of PEIL, from whom the alleged cheque has been issued. The learned counsel has placed reliance on the decision of this Court reported in MANU/TN/0880/2016 in a batch of Criminal Appeals in the case of S.Ganapathy vs. N.Senthilvel and also the decision of the Hon'ble Supreme Court reported in (2009) 10 SCC 48 (K.K.Abuja vs. V.K.Vora and another).

5 It is the grievance of the petitioners/accused that even though, the trial Court has rightly appreciated the materials placed before it in this case and passed judgment of acquittal, the lower appellate Court without any valid reason has reversed the judgment of acquittal and convicted the petitioners, which warrants serious interference of this Court.

6 The learned Senior Counsel appearing for the respondent/complainant would submit that according to the MoUs executed between the complainant and the first petitioner, EMAS to be merged with PEIL and the exchange ratio for the shareholders of EMAS (other than PEIL), for the 49.9% shares of the respondent/complainant in EMAS shall be 5 lac fully paid up shares of Rs.10 each in the capital of PEIL and Rs.10 crores to be paid by PEIL as part of consideration to the complainant. For the said Rs.10.00 crores, partners of SAF, Sri Housing and

affiliated Yogya and Investment Limited, Crimson Limited and Mrs.Vatsala Ranganathan, the erstwhile partners had pledged the shares 65,96,840 in the equity capital of the first petitioner/Company with the respondent/complainant. From the date of the MoUs, 1st petitioner/A1 PEIL had taken control of the Board of EMAS and that the process is irreversible and there was communication with the petitioner and the complainant regarding transfer of shares of 49.9% and presentation of the cheque for collection. Pursuant to the said MoUs, the complainant had resigned from the post of Managing Director and the nominated Directors of complainant had also been withdrawn. Now the entire administration of EMAS is with 1st petitioner/accused company, thereby the complainant had lost the managerial control over EMAS. Hence the complainant had discharged his obligation as per the MoUs and the accused did not come forward either to purchase the shares or to pay the amount as agreed in the MoUs. The respondent/complainant after sending communications regarding the resignation of the complainant from the post of Managing Director to the Clients and Banks, had presented the cheque given towards part consideration for the same. The fact has also been admitted by the accused, even then, the accused intimated the Bank to stop the payment for the cheque, which has clearly amount to offence under Section 138 of NI Act. When the first accused/Company admitted the liability in either civil or criminal and was having sufficient funds on the date of presentation of the cheque, he is bound to honor the cheque, which was issued towards discharge of legally enforceable debt/liability and presumption under Section 118 and 139 of NI Act would come into place, which favrous the complainant, who is the holder of the cheque. Eventhough, the respondent has been in EMAS as Advisor, he is nothing to do with the affairs of EMAS and he lost every control over EMAS. The learned Sessions Judge, after considering all the materials placed on record, had convicted the petitioners/accused and given cogent and valid reasons for the conviction, which does not call for any interference. The learned Senior Counsel appearing for the respondent/complainant has placed reliance on the following judgements:

1. MANU/TN/0880/2016 in a batch of Criminal Appeals in the case of S.Ganapathy vs. N.Senthilvel
2. (2009) 10 SCC 48 (K.K.Abuja vs. V.K.Vora and another)
3. (1998) 3 SCC 249 (Modi Cements Ltd., vs. Kuchil Kumar Nandi)
4. (2001) 6 SCC 16 (Hiten P Dala vs. Bratindranath Baneerjee)
5. (2001)8 SCC 458 (K.N.Beena) vs. Muniyappan & Nar)
6. (2002) 1 SCC 234 (M.M.T.C. Limited & Nar vs. Medchl Chemicals and Pharma)
7. (2004) 2 SCC 235 (Goa Plasts Ltd vs. Chco Ursula D'souza)
8. (2012)13 SCC 375 (Laxmi Dyechem vs. State)
9. (2015) 8 SCC 378 (T.Vasanth Kumar vs. Vijaya Kumari)
10. (2016) 10 SCC 458 (Sampelly Satyanarayana Rao vs. Indian

Renewables Energy Development)
11.(2010)11 SCC 441 (Rangappa vs. Sri Mohan)

7 Heard both sides and perused the materials available on record.

8 Firstly, the learned Senior Counsel appearing for the accused has raised an jurisdictional issue stating that against the order of acquittal passed by the Judicial Magistrate, the complainant has to file an appeal before the High Court only after obtaining special leave and the Sessions Court does not have jurisdiction to entertain the appeal and cited judgments of Constitution Bench of the Hon'ble Supreme Court and various judgments of this Court and other High Courts in this regard. On a perusal of the said judgments, it reveal that there is no clear bar to the complainant to file an appeal before the Court of Sessions against the judgment of acquittal passed by the Judicial Magistrate. Hence the complainant, being a victim, can file an appeal before the Court of Sessions against the judgment of acquittal passed by the Judicial Magistrate. Therefore the cases have to be decided on merits.

9 It is admitted by both the parties that an MoUs Ex.P10 and Ex.P11 had been executed between the parties, for merger of EMAS with the first accused Company PEIL or transfer of shares of 49.9% of the complainant to the first petitioner/accused Company and A1 Company had issued the subject cheque for Rs.10.00 Crores towards part consideration of the above said merger or transfer. It is contended by the learned Senior Counsel appearing for the petitioners that only when the merger takes places or the shares of 49.9% transferred to A1 Company, the complainant is entitled to present the cheque for Rs.10.00 Crores, whereas, in this case, on the date of presentation of the cheque by the complainant, the merger has not taken place and the shares also in the hands of the complainant and therefore, there is no criminal liability. It is seen that prior to the MoUs Ex.P10 and Ex.P11, which are sine qua non, the maximum shares i.e.50.1% are with the hands of the A1 Company, which is not disputed. Generally, the person, who is in possession of the maximum shares of the Company will take active part in activities of the Company. A1 Company, being the maximum shareholder of EMAS, was in charge of the day to day activities of EMAS, has issued the subject cheque for purchase of remaining shares of 49.9% and agreed for merger of EMAS with A1 Company PEIL. The accused have failed to rebut the presumption and the Sessions Court, being a fact finding Court, after re-appreciating entire materials available on record independently, has rightly convicted the petitioners/accused and has also given cogent reasons for the same. This Court cannot interfere with

the findings of the learned I Additional Sessions Judge, when the same is being well founded. In this regard, it is pertinent to refer the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 981 (State of Kerala Vs. Putthumana Illath Jathavedan Namboodri), held as follows:

> "... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated the with the power of an Appellate Court nor can it be treated even as a second Appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice..."

10 As far as resignation of the directorship is concerned, the evidence shows even after the date of alleged resignation of petitioners , the petitioners continuously participated in the affairs of the Company and therefore the contention raised by the Senior Counsel for the petitioners in Crl.R.C.Nos.511 and 744 of 2018 is not acceptable.

11 In the result, all the criminal revision cases are dismissed and the judgment of conviction passed by the learned I Additional Sessions Judge in Criminal Appeal No.25 of 2017 dated 28.03.2018 is hereby confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Sessions Judge, Tiruvallur.

2.The Judicial Magistrate,
Fast Track Court (Magisterial Level), Tiruvallur.

3.The Chief Judicial Magistrate,
Tiruvallur.

4.The Section Officer,
Accounts Section, High Court, Madras.

5.The Branch Manager,
Indian Bank, Madras High Court Branch,
Chennai.

+1 cc to Mr.S.Senthil, Advocate, Sr.No. 35913
+3 cc's to Mr.M.Murali, Advocate, Sr.No. 35507
+3 cc's to Mr.M.Mohammed Rafi, Advocate, Sr.No. 35508
+5 cc's to Mr.C.Arunkumar, Advocate, Sr.No. 35439

Crl.R.C.Nos.509, 511 & 744 of 2018 and
Crl.M.P.No.3079 of 2019

CSL/20.06.2019