

BAIL SLIP

The Petitioner/Accused Viz.,Thangavelu aged 58 years S/o.Edumpa Gounder was released on bail as per Order of this Court dated 19/4/18, in Crl.M.P.No.6157/2018 in Crl.R.C.514/2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.514 of 2018

Thangavelu ...Petitioner/Accused

-Vs-

L.Saravanan ...Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for records in C.A.No.37 of 2017 on the file of the Principal Sessions Judge, Krishnagiri, dated 27.02.2018 confirming the order of conviction passed by the Judicial Magistrate, Fast Track Court (Magistrate Level), Hosur, in S.T.C.No.60 of 2017, set aside the same and set the petitioner at liberty.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.E.Kannadasan

ORDER

This criminal revision case has been filed against the concurrent judgment of both the Courts below convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act (in short "NI Act").

2 The petitioner is an accused and respondent is complainant. The respondent filed a private complainant under Section 200 of Cr.P.C., against the petitioner for the offence under Section 138 of NI Act, which was taken on file in S.T.C.No.60 of 2017 by the learned Judicial Magistrate, Fast

Track Court (Magistrate Level), Hosur. The learned Magistrate after trial, found the petitioner/accused guilty and hence by judgment dated 31.07.2017 convicted him and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a further period of one month. Aggrieved against the judgment of conviction, the petitioner/accused has preferred an appeal before the learned Principal Sessions Judge, Krishnagiri, in C.A.No.37 of 2017, and the learned Sessions Judge, after hearing both the parties and after adverting to the materials placed on record, by judgment dated 27.02.2018, dismissed the appeal and confirmed the judgment of trial Court, against which the present revision has been preferred by the accused.

3 The learned counsel for the petitioner would submit that he had not borrowed any money from the respondent/complainant, in fact, he issued the subject cheque to one Dayanithi, who is a friend of the respondent/ complainant and they both colluded together and filed complaint against the petitioner/accused. The respondent/complainant has no means to lend such a huge sum of money, which fact has been admitted by the respondent/ complainant in his evidence. The petitioner has not received any notice from the respondent, since it was addressed wrongly. The respondent/complainant has not proved his case beyond reasonable doubt. Both the Courts below have failed to appreciate the above facts and erroneously convicted the petitioner/accused, which warrants interference.

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 issued a cheque bearing No.123286 dated 24.09.2015, for a sum of Rs.5,00,000/-, towards discharge of the liability. The respondent/complaint 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 neither sent any reply nor paid the amount 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 has filed the present revision against the concurrent judgment of conviction made by both the Courts

below. The petitioner/accused admitted his signature and execution of cheque. He only stated that he issued the cheque to one Dayalan and he colluded with the respondent/complainant and filed the present complaint against the petitioner. If at all the petitioner had issued the subject cheque to Dayalan, the petitioner did not take any steps to get back the cheque, after settling the due to Dayalan and has not produced any proof to show that the said Dayalan and the petitioner/accused had earlier had a money transaction. 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.

7 This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and this Court, being a revisional Court, has no power to re-assess the evidence and substitute its views on findings of fact. The lower appellate Court is a final Court of fact finding and it re-assessed the evidence and has come to the conclusion that the petitioner has committed offence. It is pertinent to note 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..."

In the present case on hand also the lower appellate Court has re-assessed entire evidence and given its findings. This Court cannot sit in the arm chair of appellate Court and re-assess the evidence and substitute its views on finding of facts. There is no merit in the revision and there is no perversity in the finding given by the lower appellate Court.

8 In the result, the criminal revision case is dismissed
Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Fast Track Court (Magistrate Level), Hosur.
2. The Principal Sessions Judge, Krishnagiri.
3. The Chief Judicial Magistrate, Krishnagiri.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.M.Devaraj, Advocate SR.25758

+lcc to Mr.E.Kannadasan, Advocate SR.25894

Cr1.R.C.No.514 of 2018

NRL(CO)
CB(10/01/2020)

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