

BAIL SLIP

The Petitioner/Accused viz., K.Boominathan, S/o.Krishnan, was directed to be released on bail as per the released on bail dated 04.04.20016 in CrI.MP.385 of 2016 in CrI.RC.577 of 2016 on the file of the this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CrI.R.C.No.577 of 2016

K.Boominathan ... Petitioner / Accused

Vs.

R.Nagarajan ... Respondent / Complainant

* * *

Prayer: Criminal Revision Petition filed under Section 397(1) read with 401 of the Code of Criminal Procedure against the judgment in Criminal Appeal No.16 of 2014 dated 17.12.2015 on the file of the Additional District and Sessions Judge, Krishnagiri District at Hosur, confirming the Judgment dated 21.03.2014 in S.T.C.No.188 of 2012 on the file of the Judicial Magistrate, Fast Track Court, Hosur.

For Petitioner : No appearance
For Respondent : Mr.V.Nicholas

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O R D E R

The concurrent findings of conviction and sentence passed by the Courts below are questioned in this revision.

2.The trial Court, i.e., the Judicial Magistrate, Fast Track Court, Hosur, convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter shortly referred to as 'the Act') and sentenced him to undergo six months simple imprisonment and also directed him to pay a sum of Rs.2,50,000/- as compensation under Section 357 Cr.P.C, vide judgment dated 21.03.2014 in S.T.C.No.188 of 2012. The said judgment was challenged by the petitioner/accused by filing an appeal in CA.No.16 of 2014. The appellate Court, viz.,

the Additional District and Sessions Court, Hosur, vide judgment dated 17.12.2015, dismissed the said appeal and thereby, confirmed the judgment of conviction and sentence passed by the trial Court.

3.It is alleged in the complaint filed by the respondent/complainant, which ended in conviction against the petitioner/accused that the petitioner/accused received a sum of Rs.2,50,000/- for purchasing a house site on 25.04.2012 and issued a post-dated cheque bearing No.448541 for such amount towards repayment of the said hand loan, which was returned with an endorsement "stop payment", when it was presented for collection on 08.11.2012. Thus, according to the respondent/complainant, the petitioner/accused issued the said cheque with an intention to cheat him and thereby committed the offence punishable under Section 138 of the Act. It is further alleged therein that in the reply notice sent by the petitioner/accused to the legal notice dated 29.11.2012 issued by the respondent/complainant, he not only denied the receipt of the hand loan of Rs.2,50,000/-, but also threw allegations that there were fabrication and concoction of the documents. Hence, the respondent/complainant has no other option except to file the private complaint, which culminated in S.T.C.No.188 of 2012 by the trial Court.

4.Before the trial Court, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.8 documents, whereas the revision petitioner / accused examined himself as D.W.1, besides examining one Mahesh as D.W.2 and marking five documents as Exs.D.1 to D.5.

5.Upon detailed appreciation of the oral and documentary evidence adduced by the parties, the trial Court found the petitioner/accused guilty under Section 138 of the Act and inflicted the conviction and sentence, as stated supra on him, which was also affirmed by the appellate Court, which judgments are sought to be challenged in this revision by the petitioner/accused.

6.There is no representation for the petitioner/accused either in person or through his learned counsel, on the previous hearing i.e., on 12.12.2019 as well as today's hearing.

7.On the other hand, the learned counsel for the respondent/complainant submitted that the trial Court has correctly considered the materials and evidence and has passed the impugned judgment and the findings of the trial Court have been rightly confirmed by the Appellate Court and hence, the judgments of the Courts below do not require any interference in the hands of this Court.

8. Heard the learned counsel for the respondent and perused the materials available on record.

9. As alluded to above, it is the case of the respondent/complainant that the petitioner/accused borrowed a sum of Rs.2,50,000/- and issued the post-dated cheque in question as security, with a direction to present the same for collection on the date mentioned therein ; however, when the same was presented for collection, it was returned without being honoured, as the petitioner/accused gave an instruction to the bank to stop payment; the respondent/complainant issued a legal notice, to which, the petitioner/accused sent his reply with untenable allegations; and thus, the petitioner / accused committed the offence under Section 138 of the Act.

10. The petitioner / accused, in his reply notice dated 12.12.2012 claimed that the respondent/complainant was introduced to him by one Veeramanikandan, who was a building contractor, and he received a sum of Rs.75,000/- by giving a blank signed cheque as security. It is further claimed by the petitioner/accused that though he repaid the said sum to the respondent/complainant and demanded the documents submitted as security, the same were not returned to him under the pretext that the same were misplaced and hence, he gave instruction to the bank for "Stop payment". Contrary to the same, the petitioner/accused asserted before the trial Court that he entered into a building contract with Veeramanikandan and paid a sum of Rs.5,00,000/-; when the construction work was in progress, he received a hand loan of Rs.75,000/- from the said person and gave a cheque bearing No.395534 drawn on ICICI Bank as surety for the said sum, which was taken away by the respondent/complainant for the loan to be paid by the said Veeramanikandan and the respondent/complainant encashed the same. To substantiate the same, he marked Ex.D.3-declaration of the said Veeramanikandan. However, he failed to examine the said person to prove the contents found therein.

11. After a threadbare analysis of the materials on record, the trial Court has observed that the petitioner/accused has admitted in his reply notice that he received a sum of Rs.75,000/- from the respondent/complainant, but denied only the quantum of amount i.e., Rs.2,50,000/-, whereas, he has taken a defence that he received the said sum of Rs.75,000/- only from Veeramanikandan; and thus, the defence so taken by the petitioner/accused is inconsistent with that of the statement made in the reply notice sent by him and therefore, the same becomes unreliable and untrustworthy. Further, the non-examination of the said Veeramanikandan as regards the averment made in Ex.D3, is also fatal to his defence. The trial Court has ultimately concluded that the respondent/complainant proved the

legally enforceable debt or liability, whereas the petitioner/accused failed to rebut the presumption under Section 139 of the Act. The trial Court has accordingly, convicted the petitioner/accused and sentenced him for the offence under Section 138 of the Act.

12.The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits.

13.This Court finds no reason much less valid reason to interfere with the concurrent findings so rendered by the Courts below. Further, it is settled law that while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence like a Court of appeal, unless it is shown that the findings on facts arrived at by the Courts below are on the face on it perverse.

14.In fine, this revision is dismissed being devoid of merits. The trial Court is directed to secure the petitioner/accused and commit him in prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be. It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.* before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in Crl.R.C.No.577 of 2016. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

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Assistant Registrar

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Sub Assistant Registrar

gg/rk

To

1.The Additional District and Sessions Judge,
Krishnagir at Hosur.

2.The Judicial Magistrate, Fast Track Court, Hosur.

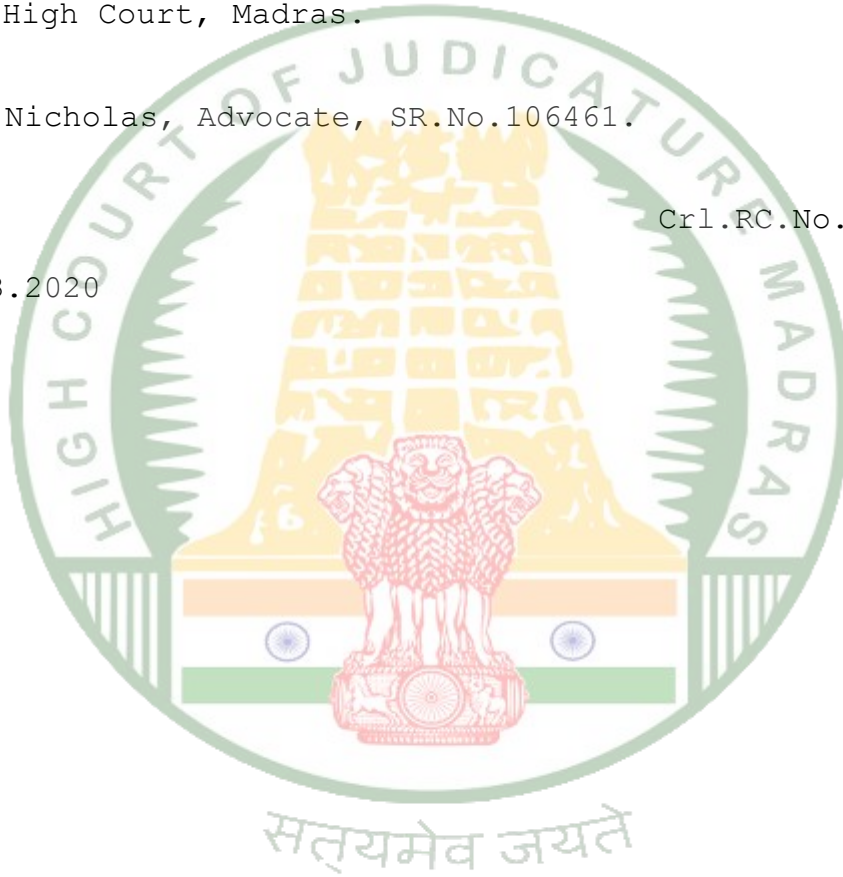
Copy to: The Assistant Registrar(Crl.Side),
High Court, Madras.

The Section Officer, Crl. Section,
High Court, Madras.

+1cc to V.Nicholas, Advocate, SR.No.106461.

Crl.RC.No.577 of 2016

RR(CO)
CSR: 16.03.2020



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