

Bail Slip

The Petitioner/Accused viz Karthikeyan, Male, aged 64 years, S/o. Subramaniam was released on bail as per order of this Court dated 28.04.2018 in CrI.M.P. No. 6856 & 6858/2018 in CrI.R.C. No. 581/2018, CrI.M.P. 6859 & 6861/2018 in CrI.R.C.582/2018, CrI.M.P. 6862 & 6864/2018 in CrI.R.C.583/2018 respectively 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.Nos.581 to 583 of 2018

Karthikeyan ...Petitioner in all the RCs/Accused

-Vs-

A.Murugaraj ...Respondent in all the RCs/Complainant

Prayer in all the Revisions: Criminal Revision Cases filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the convictions imposed in judgments dated 27.03.2018 in C.A.Nos.7 to 9 of 2018 respectively by the learned I Additional District and Sessions Judge, Erode, confirming the conviction imposed in the judgments dated 22.11.2017 in C.C.Nos.544, 546 and 545 of 2010 by the learned Judicial Magistrate No.II, Erode.

For Petitioner : Mr.Deepan Uday - in all the RCs
For Respondent : Notice not served

COMMON ORDER

These criminal revisions have been filed against the judgments of conviction dated 27.03.2018 in C.A.Nos.7 to 9 of 2018 by the learned I Additional District and Sessions Judge, Erode, confirming the conviction imposed in the judgments dated 22.11.2017 in C.C.Nos.544, 546 and 545 of 2010 by the learned Judicial Magistrate No.II, Erode.

2 The petitioner is accused and respondent is complainant. The respondent filed private complaints under Section 200 of Cr.P.C against the petitioner for the offence

punishable under Section 138 of Negotiable Instruments Act (in short 'NI Act'), which were taken on file in C.C.Nos.544, 546 and 545 of 2010 by the learned Judicial Magistrate No.II, Erode. The learned Judicial Magistrate, after trial found the petitioner/accused guilty of offence punishable under Section 138 of NI Act and hence by judgments dated 22.11.2017 convicted him in all the three cases and sentenced to undergo simple imprisonment for a period of six months and imposed fine of Rs.3000/-in default, to undergo simple imprisonment for a further period of one month, in each cases. Aggrieved against the judgments of conviction, the petitioner had preferred three separate appeals before the learned Principal District and Sessions Judge, Erode, the same was taken on file in C.A.Nos.7 to 9 of 2018 and were made over to the learned I Additional District and Sessions Judge. The learned Sessions Judge, after hearing both the parties, had dismissed all the appeals and confirmed the judgments of conviction and sentence passed by the trial Court. Assailing the concurrent judgment of the Court below, the petitioner is before this Court with these criminal revision cases.

3 The learned counsel for the petitioner would submit that the respondent had presented all the cheques on the same day for encashment, without even intimating to the petitioner, with an intention to make all the cheques got bounced for filing complaint against the petitioner. Further, it is the case of the complaint, that the petitioner borrowed money on three different occasions, but there is no proper explanation as to why he has given money again, when the earlier due is pending. The petitioner had given the subject cheques only for security purpose and not for any legally enforceable debt. Both the Courts below have failed to appreciate the above facts and convicted the petitioner by drawing presumption under Section 118 & 139 of NI Act, which warrants interference.

4 Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5 Case of the respondent/complainant is that he is doing yarn and Jawli business. The petitioner/accused is a Bank staff and he is known person to the respondent/complainant. The petitioner borrowed money from on different occasions and issued cheques towards discharging the same and when the respondent presented the cheques for collection, the same were returned as 'insufficient funds' . Thereafter, on receipt of return memo of the bank, the complainant issued legal notices to the petitioner, despite receipt of the notices, the petitioner neither sent any reply nor paid any amount. Hence the respondent/complainant filed three complaints against the petitioner.

6 It is seen that the petitioner had admitted the signature and execution of cheques. It is settled proposition of law that once signature and execution of cheque is admitted then automatically, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. It is for the accused to rebut the presumption in the manner known to law. To rebut the said legal presumption, it is not necessary for the accused to come into witness box or to produce strong proof, he can rebut the presumption through preponderance of probability or by cross examining the witnesses. Both the trial Court as well as the lower appellate Court, after appreciating the oral and documentary evidences, had given a concurrent finding that the petitioner/accused found guilty of offence punishable under Section 138 of NI Act and convicted him in all the three cases. The petitioner/accused has failed to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of NI Act.

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 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 cases 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 these revisions and there is no perversity in the finding given by the lower appellate Court.

8 In the result, these criminal revision cases are dismissed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The I Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate No.II, Erode.
3. The Chief Judicial Magistrate, Erode

Copy to

The Section Officer
Criminal Section
High Court, Madras 104

CrI.R.C.Nos.581 to 583 of 2018

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



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