

BAIL SLIP

The Petitioner/Petitioner namely Kavitha was released on bail as per order of this Court dated 11.08.2018 in CrI.MP.No.10589/2018 in CrI.R.C.No.913/2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.913 of 2018

and

CrI.M.P.No.10590 of 2018

Kavitha

....Petitioner

-Vs-

C.Poongothai

...Respondent

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment of conviction dated 20.01.2018 made in C.A.No.30 of 2017 by the learned Principal District and Sessions Judge, Vellore, Vellore District, reversing the judgment of acquittal made by the learned Judicial Magistrate (Fast Track Court), Vellore, in C.C.No.774 of 2011 dated 23.02.2017.

For Petitioner : Mr.A.Rajesh Kanna

For Respondent : Mr.R.Karthikeyan

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O R D E R

This criminal revision has been filed against the judgment of conviction dated 20.01.2018 made in C.A.No.30 of 2017 by the learned Principal District and Sessions Judge, Vellore, reversing the judgment of acquittal dated 23.02.2017 made in C.C.No.774 of 2011 by the learned Judicial Magistrate (Fast Track Court), Vellore.

2 The petitioner is accused and respondent is complainant. The respondent filed a complaint against the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act (in short "NI Act") before the learned Judicial Magistrate (Fast Track Court), Vellore, which was taken on file in C.C.No.774 of 2011. The learned Magistrate, after trial, found the petitioner/accused not guilty of offence under sections 138 and 142 of NI Act, by judgment dated 23.02.2017, acquitted the petitioner/accused. Against the judgment of acquittal, the respondent/complainant had preferred an appeal before the learned Principal District and Sessions Judge, Vellore, in C.A.No.30 of 2017. The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 20.04.2018 reversed the judgment made by the trial Court by convicting the petitioner/accused and sentenced him to undergo simple imprisonment for six months and directed the petitioner to pay cheque amount of Rs.70,000/- as compensation along with interest @ 6%, in default, to undergo simple imprisonment for a further period of three months and also directed the petitioner/accused to pay a sum of Rs.3,000/- towards cost. Aggrieved against the judgment of conviction, the petitioner/accused is before this Court.

3 The learned counsel for the petitioner/accused would submit that the respondent/complainant himself admitted that the recitals of the cheque are filled by different ink. The respondent/complainant had failed to prove his case beyond reasonable doubt. Even though, the trial Court, after considering the evidences and materials placed on record, had rightly acquitted the petitioner/accused, whereas, the lower appellate Court had convicted the petitioner/accused, which warrants interference.

4 According to learned counsel for the respondent, the petitioner/accused has admitted her signature found in the cheque and execution of the cheque and hence it is for the accused to prove that the cheque was not issued towards legally enforceable debt. Hence the lower appellate Court had rightly convicted the petitioner/accused and the same does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that trial Court acquitted the petitioner/accused, since the respondent/complainant had not proved his case beyond reasonable doubt, but, the lower appellate Court had held that the petitioner/accused found guilty of offence punishable under Sections 138 and 142 of NI

Act and convicted her. The lower Appellate Court, while convicting the petitioner/accused had observed that once signature and execution of the cheque is admitted, it is for the petitioner/accused to prove that the cheque was not issued towards legally enforceable debt and when the accused fails to prove the same, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, who is holder of cheque. No doubt, the above said presumption is rebuttable and in this case, the petitioner/accused has failed to rebut the same in the manner known to law or preponderance of probabilities. Hence this Court does not find any merit in the revision and hence the revision is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Vellore,
Vellore District.
2. The Judicial Magistrate
(Fast Track Court),
Vellore.
3. The Chief Judicial Magistrate,
Vellore.

+1cc to Mr.A.Rajesh Kanna, Advocate, S.R.No.16557

+2cc to Mr.R.Karthikeyan, Advocate, S.R.No.16575

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Crl.R.C.No.913 of 2018 and
Crl.M.P.No.10590 of 2018

Nr1 (CO)
Kak (03/04/2019)