BAIL SLIP

The petitioner viz, H.Ubaidulla, aged about 48 years, S/o.N.S.A.Hadeep Rahman, was directed to be released on bail on 13.11.2017 vide Crl.M.P.No.14054 & 14055/2017 in Crl.R.C No.1424/17

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2018
DELIVERED ON : 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1424 of 2017

H.Ubaidulla ...Petitioner

Vs

S.Elango ...Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of the Sessions Judge, Cuddalore Division, Cuddalore in C.A.No.58 of 2014 ordered dated 03.07.2017, confirming the judgment passed by the Judicial Magistrate No.II, Cuddalore vide Order dated 07.10.2014 in C.C.No.121 of 2010 for the alleged offence said to have been committed under Sections 138 and 142 of the Negotiable Instruments Act.

For Petitioner : Mr.N.Chandrasekaran
for M/s.K.Kannan

For Respondent : Mr.A.K.Velan

ORDER

This Criminal Revision Petition is filed by the petitioner/appellant/accused against the order passed by the Sessions Judge, Cuddalore in C.A.No.58 of 2014 dated 3.7.2017, wherein the learned sessions Judge confirmed the conviction and sentence passed by the Judicial Magistrate No.II, Cuddalore in C.C.No.121 of 2010 dated 7.10.2014.

2.Brief case of the petitioner/appellant/accused:

The petitioner/appellant/accused approached the complainant on 01.03.2010 and requeste for hand loan of Rs.5,00,000/- for his family and business expenses and issued a post dated cheque in favour of the respondent/complainant bearing No.782673 drawn on Punjab National Bank Limited, Ulundurpet Branch dated 31.3.2010 for Rs.5,00,000/- and the respondent/complainant presented the cheque in Indian Overseas Bank, Manjakuppam Branch, Cuddalore on 31.3.2010 and the said cheque was returned on 5.4.2010 with an endorsement “Funds Insufficient”. The respondent/complainant sent a statutory notice to the petitioner/accused on 13.4.2010 and the same was received on 15.4.2010. The petitioner/accused have not paid the cheque amount. Hence the respondent/complainant filed complaint under section 138 of Negotiable Instrument Act.

3.During the trial, the respondent/complainant examined himself as PW1 and marked Exhibits P1 to P5 and Exhibit P1 is the cheque No.782673, Exhibit P2 is the return memo, Exhibit P3 is the copy of demand legal notice dated 13.4.2010, Exhibit P4 is the acknowledgement card and Exhibit P5 is the reply notice. The respondent/accused has not adduced any rebuttal evidence.

4.After completion of the trial, the learned trial Court convicted the petitioner/accused and sentence him to undergo simple imprisonment of 6 months and also to pay compensation of Rs.5,00,000/- under section 357 of Cr.P.C. to the respondent/complainant in default to undergo simple imprisonment for 2 months for the offence under section 138 of Negotiable Instruments Act.

5.Aggrieved over the same, the petitioner/accused preferred criminal appeal in C.A.No.58 of 2014 before the learned Sessions Judge, Cuddalore Division.

6.On hearing both parties, the learned lower appellate Court dismissed the criminal appeal filed in C.A.No.58 of 2014 and confirmed the conviction and sentence imposed by the trial Court. Aggrieved over the same, this criminal revision is filed.

7.The learned counsel for the petitioner/accused submits that the Learned sessions Judge and the lower Court had failed to consider that no bank pass book and Income Tax Returns had been produced by the complainant in proof of advancing the alleged loan to the petitioner/accused, thereby proving that the cheque was concocted with malafide intentions and ulterior motive.

8.The learned counsel for the petitioner/accused submits that the Learned Sessions Judge and the Lower Court failed to note that the petitioner had approached the complainant on

01.03.2010 and requested for the need of Rs.5,00,000/- and immediately the complainant handed over the money for which the petitioner/accused also gave a cheque as security for the amount received on the same day.

9.The learned counsel for the petitioner/accused submits that the Learned Sessions Judge and the Lower Court failed to note that the complainant is a milk seller and the petitioner/accused used to buy milk from the complainant. The relation between the petitioner/accused and complainant is only of buyer and seller, and they are neither friends nor relative. This being so how the complainant has given a huge sum of Rs.5,00,000/- to the petitioner/accused.

10.The learned counsel for the petitioner/accused submits that the Learned Sessions Judge and the Lower Court failed to note that the complainant had not proved that the petitioner/accused obtained money from him due to family expenses, business purpose.

11.The learned counsel for the petitioner/accused submits that the Learned Sessions Judge and the Lower Court failed to note that it is clearly reveals that the date and the other body of the cheque is filled up by the complainant and according to his convenient and both the Courts have failed to note that except for the signature portion of the cheque the date and other body is filled up by the complainant.

12.The learned counsel for the petitioner/accused submits that the Learned Sessions Judge and the Lower Court failed to note that under the law the blank cheque is only a piece of paper and it is not a valid negotiable instrument as contemplated under the act.

13.The learned counsel for the petitioner/accused submits that the Learned Sessions Judge and the Lower Court failed to note that the petitioner's brother has given 3 cheques as security for chit, it has been shown that like the petitioner and the petitioner's brother has bought hand loan on the same date those cheques were used by respondent/complainant.

14.The learned counsel for the petitioner submits the following citations in support of his submissions:

1) (2015) 1 SCC 99

2) (2017) 4 MLJ (Crl.)290

15.The learned counsel for the Respondent/complainant opposed the contentions raised by the revision petitioner and sought dismissal of the revision and also submitted the following citations in support of his submissions:

1) SCC Judgment in C.A.688 of 1995

2) SCC Judgment in C.A.1066 of 2001

16.I have heard Mr.N.Chandrasekaran for M/s.K.Kannan, learned counsel for the petitioner and Mr.A.K.Velan, learned counsel for the respondent. I carefully perused the entire records of the case including the evidences adduced and Exhibits marked in this case.

17.The learned counsel for the revision petitioner contended that he has not borrowed any money from the complainant and Exhibit P1 cheque was not handed over by him towards discharge of legally enforceable debt as contended by the complainant. Though the revision petitioner/accused admitted his signature in Exhibit P1, the evidence on record substantiate the grounds raised by the petitioner/accused regarding the non production of bank pass book and income tax returns for the alleged loan.

18.In this case on hand, the statutory notice issued by the respondent/complainant Exhibit P3 is vague and not even mentioned the transactions between both parties specifying the borrowal of money. It is admited in the evidence that the petitioner used to buy milk from the respondent and the respondent is a milk seller by profession. The Courts below failed to appreciate the discharge of huge amount of Rs.5 Lakhs from the milk seller.

19.The specific case of the petitioner is that the cheques were given a security to the chit transactions with one Murugan by his brother and the same was misused by the respondent. The learned trial Court held that the petitioner failed to prove the contentions raised by him which was also accepted by the lower appellate Court.

20.At the outset, I am of the view that, once the loan amount itself is disputable and not come under the purview of legally enforceable debt, the burden of proof still lies on the complainant to prove that the cheque was issued for particular purpose and the loan amount of Rs.5 Lakhs was given to the petitioner. The Hon'ble Apex Court often retrates in its judgment that holder in due course has to prove the ingredients envisaged in 139 of the Negotiable Instruments Act. The real issue is not about the issuance of cheque but the competence of giving loan as alleged in the compact. Once the competence is questioned by the accused, it is for the complainant to prove the case of loan paid by him.

21.It is settled law that the standard of proof required on the part of the accused is “preponderance of probabilities”. The Court can also take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. In this case, the respondent claimed that the cheque was issued by the petitioner at the time of taking loan of Rs.5 Lakhs from him. However, in the complaint, the date on which, the loan was given to the petitioner /accused has not been stated. There is no explanation for the same. The respondent did not charge any interest. The Hon'ble Supreme Court in Krishna Janardhan Bhat V Dattaraya G Hegde (supra) has held that Courts have to take notice that ordinarily in terms of section 269 SS. Income Tax Act, any advance taken by way of loan of more than Rs.5 Lakhs had to be made by an account payee cheque only. Under these circumstances it can be safely concluded that the respondent/complainant has rebutted the presumption under section 139 of the Negotiable Instruments Act.

22.Once there presumption is rebutted, it is the respondent/complainant to prove that the cheque was issued towards enforceable liability. As already pointed out, the respondent/complainant has not produced any reliable evidence to show that he lent Rs.5 Lakhs to the accused. His mere oral evidence is not sufficient to hold that he lent money to the petitioner/accused.

23.In the result, this criminal revision is allowed and the order passed by the learned Sessions Judge, Cuddalore Division, Cuddalore in C.A.No.58 of 2014, dated 03.07.2017, confirming the judgment passed by the learned Judicial Magistrate No.II, Cuddalore, dated 07.10.2014 in C.C.No.121 of 2010 is set aside. The petitioner/accused is acquitted under section 139 of the Negotiable Instruments Act.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
   Cuddalore Division, Cuddalore.

2. The Judicial Magistrate No.II,
   Cuddalore.

3. -Do- Thro' The Chief Judicial Magistrate,
   Cuddalore.

4. The Sessions Judge, Cuddalore Division,
   Cuddalore.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1CC to M/s.E.Sathiyaraj, Advocate,SR.No.13237

Crl.R.C.No.1424 of 2017

Kak(15/03/2019)