



BAIL SLIP

The Appellant/Accused namely S.Rajalakshmi, W/o.Selvam was released on bail vide order dated 22.06.2017 in CrI.Mp.No.7140 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.781 of 2017

S.Rajalakshmi .. Petitioner/Appellant/Accused

Vs.

Veerapandiyan .. Respondent/Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 15.11.2016 passed by the learned Principal District and Sessions Judge, Thiruvarur in CrI.A.No.13 of 2015 against the order dated 09.10.2014 in S.T.C.No.4 of 2014 on the file of the Fast Track Judicial Magistrate Court, Thiruthuraipoondi.

For Petitioner	:	Mr.S.Arivazhagan
For Respondent	:	Mr.A.Ilango

O R D E R

This Criminal Revision has been filed to set aside the order dated 15.11.2016 passed by the learned Principal District and Sessions Judge, Thiruvarur in CrI.A.No.13 of 2015 against the order dated 09.10.2014 in S.T.C.No.4 of 2014 on the file of the Fast Track Judicial Magistrate Court, Thiruthuraipoondi.

2. The revision petitioner is the accused and the respondent is the complainant. The case of the petitioner is that the respondent/complainant filed a private complaint under Section 200 Cr.P.C for the offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Fast Track Court, Thiruthuraipoondi in STC.No.04/2014. The main allegation is that the petitioner is said to have borrowed a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) on



04.12.2013 and for the repayment of the said amount, he had issued a cheque bearing No.237868 dated 20.12.2013 drawn on the State Bank of India, Thiruthuraipoondi, which upon presentation, returned unpaid for the reason "Insufficient Funds" on 26.12.2013. The respondent/complainant issued a statutory notice to the revision petitioner/accused on 11.01.2014. After receipt of the statutory notice, neither he repaid the amount nor returned the cheque. Therefore, the respondent/complainant preferred the complaint. After trial, the learned Judicial Magistrate, Thiruthuraipoondi came to the conclusion that the revision petitioner/accused has committed the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo 6 months Simple Imprisonment and to pay a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) as compensation, against which, the revision petitioner/accused preferred an appeal in Crl.A.No.13 of 2015 before the learned Principal District and Sessions Judge, Thiruvarur. After hearing the arguments on both sides, the learned Principal District and Sessions Judge, Thiruvarur, dismissed the appeal and confirmed the Judgment of the trial Court. There against, the accused has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the revision petitioner is alleged to have borrowed a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) on 14.12.2013 and at that time of borrowal, no document was obtained from the revision petitioner by the respondent/complainant. Without obtaining any documents, it is not possible to lend a sum of Rs.4,50,000/-. The case of the respondent/complainant is that only on 20.12.2013, the revision petitioner/accused issued a cheque for a sum of Rs.4,50,000/-. Therefore, the respondent/complainant has not proved that on the date of borrowal, no document was executed and also on the date of issuing the cheque, no borrowal or consideration was taken place. The learned counsel further submitted that the petitioner borrowed the said amount through third party and also issued cheque to the third party only. The petitioner/accused has not borrowed any amount from the respondent/complainant and he has not issued any cheque in favour of the respondent/complainant. The said facts were not considered by both the Courts below, which warrant interference.

4. Heard the learned counsel appearing for the revision petitioner, the learned counsel for the respondent and perused the materials on record.

5. On reading of the entire materials, it is seen that the case of the respondent/complainant is that the revision petitioner/accused is said to have borrowed a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) on



14.12.2013 and he issued a cheque bearing no.237868 dated 20.12.2013 for the repayment of the said amount. When the cheque was presented on 26.12.2013, the same was returned for the reason "Insufficient Funds". After receipt of the memo dated 26.12.2013 from the Bank, the respondent/complainant issued the statutory notice on 09.01.2014. The said notice was received by the revision petitioner/accused on 11.01.2014. In order to prove the case, the respondent/complainant has examined himself as PW-1 and also marked Ex.P1-disputed cheque, Ex.P2-returned memo, Ex.P3-Statutory notice and Ex.P4-Acknowledgement.

6. The respondent/complainant has proved his initial burden. The cheque was issued for due consideration and it is for discharging legally enforceable debt or liability. It is for the accused to rebut the presumption in the manner known to law. Though the revision petitioner/accused has not sent any reply, he has not come to the witness box. He can rebut the presumption in the manner known to law. In this case, the signature and the execution of the cheque were admitted by the revision petitioner/accused. Once the signature is admitted and execution is admitted, there is a presumption that the cheque was issued for legally enforceable debt or liability. It is for the accused has to rebut the presumption in the manner known to law, but not mere bald denial.

7. This Court finds no perversity or infirmity in the judgment passed by the Courts below. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Judicial Magistrate, Thiruthuraipoondi.
2. The Principal District and Sessions Judge, Thiruvarur.
3. The Chief Judicial Magistrate, Thiruvarur.

+2cc to Mr.A.Ilango, Advocate, S.R.No.24372

+1cc to Mr.S.Arivazhagan, Advocate, S.R.No.24065

Crl.R.C.No.781 of 2017

PVS (CO)
CS/06/01/2020