Bail Slip

The Petitioner herein/Accused namely M.Palanisamy s/o.Muthusamy Gounder aged about 61 years, was directed to released on bail as per order of this Court dated 16/10/2018 made in Crl.M.P.No.13942 of 2018 in Crl.R.C.No1183 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.1183 of 2018

M.Palanisamy Petitioner/Accused

Vs

A.Nataraj Respondent/Complainant

Prayer:- This Criminal Revision has been filed, under Section 397 read with 401 of Cr.PC., to call for the records, relating to the judgement, dated 19.09.2018 made in Crl.A.No. 305 of 2017, on the file of the I Additional District and Sessions Judge, Coimbatore, modifying the judgement of conviction and sentence, dated, 11.09.2017, made in CC.No. 358 of 2017 by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore and to set aside the same and to acquit the petitioner.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : Dr.T.Ramasamy for Mr.A.S.Palanisamy

ORDER

1. This Criminal Revision has been filed, under Section 397 read with 401 of Cr.PC., to call for the records, relating to the judgement, dated 19.09.2018 made in Crl.A.No. 305 of 2017, on the file of the I Additional District and Sessions Judge, Coimbatore, modifying the judgement of conviction and sentence, dated, 11.09.2017, made in CC.No. 358 of 2017 by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore and to set aside the same and to acquit the petitioner.

2. The facts leading to filing of this Criminal Revision Petition are as follows:-

a) The Petitioner/Accused had borrowed a sum of Rs.7,50,000/- from the Respondent/Complainant on 01.12.2009, under a promissory note, agreeing to repay the said amount with interest at 24% per annum. On demand, in order to discharge the said liability, the Petitioner/Accused had issued two cheques, dated 09.05.2012 and 30.05.2012, bearing Nos. 867698 and 871926, for a sum of Rs.5,00,000/- each, drawn on IOB, Chinnathadagam Branch, in favour of the Respondent/ complainant. When the said cheques were presented for encashment, through his banker, namely, Karur Vysya Bank, Coimbatore Branch, the same were dishonoured and returned on 21.06.2012 on the ground of "Insufficient Funds". Hence, a legal notice, dated 28.06.2012 was issued and the same had been acknowledged by the petitioner. However, the Petitioner/Accused has not chosen to repay the amount. Hence, on the private complaint given by the Respondent/ complainant, the Petitioner/Accused was charge sheeted for the offence under Section 138 of the Negotiable Instruments Act in CC.No.358 o 2017 before the Judicial Magistrate, FTC, Magisterial Level II, Coimbatore.

b) The Trial Court, in and by the impugned judgement, had found the Petitioner/Accused guilty under Section Section 138 of Negotiable Instrument Act and convicted and sentenced him to undergo one year Simple Imprisonment and to pay the cheque amount of Rs.10,00,000/- as compensation to the Respondent/ complainant within one month, in default to undergo three months Simple Imprisonment. In the appeal in Crl.A.No.305 of 2017 filed as against the judgement of conviction and sentence of the Trial Court, before the I Additional Sessions Judge, Coimbatore, in and by the impugned judgement, the lower appellate court, while confirming the conviction of the Trial Court, had modified the sentence to the effect that the Petitioner/Accused shall undergo six months Simple Imprisonment and to pay a sum of Rs7,50,000/-, within one month, in default to undergo one month Simple Imprisonment. As against the same, this Criminal Revision Petition has been filed.

3. This court heard the submissions of the learned counsel on either side.

4. The learned counsel for the Petitioner would submit that there is no evidence to prove the transaction between the complainant and the Petitioner and that there was no relationship of creditor and debtor between the complainant and the Petitioner and as such, there was no subsisting liability and legally enforceable liability or legally recoverable debt in respect of the cheques in question. He would further submit that the Respondent has failed to establish the source of income by filing Income Tax return and that the Respondent failed discharge the burden of proof as per the Act and that the Respondent had misused the cheques which were given as security and that the

Respondent did not produce any independent documents for the alleged hand loan and as such, the presumption under Section 139 of the Negotiable Instruments Act stands rebutted and he would pray to set aside the impugned judgements of the courts below.

5. On the other hand, the learned counsel for the Respondent/ complainant, by filing a counter, would submit that the Trial Court, finding that the Petitioner/Accused had not disputed the signature in the bounced cheques issued to the complainant and that the Petitioner/Accused failed to rebut the presumption under Section 139 of the Negotiable Instruments Act, by sufficient evidence and since the burden was not shifted, the presumption in favour of the complainant still subsists and based on valid evidence, had rightly convicted and sentenced the Petitioner/Accused and that the impugned judgement of the lower appellate court is not consonance with the provisions of Cr.PC and that when once it declared its decision that there was no necessity to interfere with the sentence and compensation amount imposed on the Petitioner/Accused, it has no legal basis to reduce the sentence and cheque amount under mercy/ compassionate aspects and he would seek for upholding the judgement of conviction and sentence of the Trial Court.
6. I have gone through the materials on record.
7. It is to be seen as to whether there is any illegality or perversity in the findings of the Trial Court and the lower appellate court, warranting interference.
8. Based on the evidence and arguments, the Trial Court had formulated the question as to whether the cheques in question were issued by the Petitioner/Accused for discharge of existing liability and the same were returned dishonoured and the Petitioner/Accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act.
9. The borrowal amount is Rs.7,50,000/-. PW.1 is the complainant. Ex.P1 is original promissory note. Ex.P2, dated 9.5.2012 and Ex.P3, dated 30.05.2012 are cheques, each for Rs.5,00,000/-, which were returned dishonoured. Ex.P4 and Ex.P5 are the cheque return memos and Ex.P6 is the legal notice sent by the complainant.
10. While analysing the evidence, it is elicited that the cross examination of PW.1, complainant revealed that the Petitioner/Accused was known to the complainant for the past 25 years and the complainant was doing business in firewood. The promissory note was prepared and brought by the accused and one Yoganathan stood as a witness. The cheques were issued subsequent to the borrowal on 01.12.2009. Considering the evidence on record, the Trial Court had found that the case of the complainant as to debt is rest upon the promissory note Ex.P1 and the cross examination of PW.1 would show that the accused has not disputed about the cheques in the hands of the complainant and that the denial of the signatures is only a bare denial, which is not sufficient and that the Petitioner/Accused had not produced

any material to show that the signature in the promissory note is not that of him. Further, there was no reply sent by the Petitioner/Accused to the legal notice sent by the complainant.

11.Based on the materials, the Trial Court had found that the Petitioner/Accused had not disputed the signatures in the cheques in question marked as Ex.P2 and Ex.P3 and that the Petitioner/Accused during his 313 questioning, had only denied the case as a false one and there was no material to disbelieve the case of the complainant and thereby, the Trial Court, though drawing the statutory presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant, since the burden was not shifted, the presumption in favour of the complainant still subsists, had presumed that the cheques were issued for discharge of legally enforceable debt or liability and that since the cheques were dishonoured and debt was not discharged, the accused had committed the offence under Section 138 of the Negotiable Instruments Act and accordingly, the Trial Court had rightly convicted and sentenced the Petitioner/Accused by the impugned judgement. However, the lower appellate court, while upholding conviction of the Petitioner/Accused, had modified the sentence by reducing the period of imprisonment and the compensation amount, on sympathy and compassionate grounds, which in the opinion of this Court, is not proper.

12.In the opinion of this Court, once it is proved that the cheques were issued to discharge the legally enforceable debt, then it is for the Petitioner/Accused to rebut the presumption in the manner known to law, but he failed to do so.

13.In 2019 SCC Online SC 1361 (Uttam Ram Vs. Devinder Singh Hudan and another), the Honourable Supreme Court, following its earlier decisions, had held that a dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

14.In this case, the complainant has proved that the cheque was issued by the accused and when it had been presented for collection, it was dishonoured. There is a statutory presumption of consideration and the burden is on the accused to rebut the presumption that the cheque was not issued for any debt or liability. In this case, the Petitioner/Accused has failed to rebut the presumption and thereby the courts below have rightly found the Petitioner guilty under Section 138 of the Negotiable Instruments Act.

15.However, the lower appellate court, on sympathy ground, had reduced the compensation to Rs.7,50,000/-, which is not proper in view of the decision of the Honourable Supreme Court reported in 2005 10 SCC 420 (State of UP Vs. Shri

Kishan), wherein it was held that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society.

16. On reading of the entire evidence, this Court does not find any perversity in appreciating the evidence or interpreting the provisions of law by the Trial Court, in so far as the conviction is concerned. Further, there are no merits in this Criminal Revision Case. In this case, the cheque amount is for Rs.10,00,000/-. There is no reason given by the lower appellate court to reduce the compensation amount to Rs.7,50,000/-. In the opinion of this Court, when the lower appellate court, based on the materials and evidence, came to the conclusion that the Petitioner/Accused had committed the offence under Section 138 of the Negotiable Instruments Act, it is not open to it to reduce the compensation amount to Rs.7,50,000/- while Rs.10,00,000/- remains as the amount liable to be paid by the accused under the dishonoured cheque. The cheques have been issued in the year 2012 for Rs.10,00,000/-. The lower appellate court has shown undue sympathy to the Petitioner/Accused. In view of the above, while the conviction of the courts below and the period of sentence as modified by the lower appellate court, are held to be confirmed, the compensation as awarded by the Trial Court is to be confirmed.

17. In the result, this Criminal Revision Case is dismissed, (a) confirming the conviction of the Petitioner/Accused imposed by both the courts below and the period of sentence of imprisonment, as modified by the lower appellate court, (b) setting aside the modification of sentence of compensation by the lower appellate court and (c) enhancing the compensation amount from Rs.7,50,000/- awarded by the lower appellate court, to Rs.10,00,000/-, which is the cheque amount, as awarded by the Trial Court and The bail bond if any executed by the Petitioner/Accused shall stand cancelled. The Trial Court shall take necessary steps to secure the Petitioner/Accused, to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Srcm/Kmm

To:

1.The Public Prosecutor, High Court, Madras

2.The I Additional District and Sessions Judge, Coimbatore

3.The Judicial Magistrate, Fast Track Court at Magisterial Lever-II, Coimbatore

4.The Chief Judicial Magistrate, Coimbatore (for information)

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.92079

+2cc to Dr.T.Ramasamy, Advocate SR.No.91022

Crl.RC.No.1183 of 2018

SAI(CO)
GMY(12/12/2019)