BAIL SLIP

Chinnadurai, Male, Age 42/2011,Son of Ramachandra velalar was directed to be released on bail vide order of this Hon'ble Court dated 19.07.2011 made in Mp(MDNo.2 of 2011 in Crl.R.C (MD)No.550 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.550 of 2011

Chinnadurai ... Petitioner / Appellant/Sole Accused

Vs.

Johnson Soundarraj ... Respondent/ Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records of the learned Additional District and Sessions Judge, (FTC-II), Pattukottai in Crl.A.No.27 of 2010 by judgment dated 28.04.2011, confirming the conviction and sentence of imprisonment imposed by the learned Judicial Magistrate, Pattukottai in C.C.No.930 of 2007 by the judgment dated 01.03.2010 and set aside the judgments of the Courts below and acquit the petitioner.

For petitioner : Mr.S.Deenadhayalan
for Mr.M.Karunanithi
For Respondent : Mr.M.Subash Babu

ORDER

This Criminal Revision Case is filed as against the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate, Pattukottai, in C.C.No.930 of 2007 by order dated 01.03.2010 and confirmed by the learned Additional District and Sessions Judge, (Fast Track Court No.II), Pattukottai C.A.No.27 of 2010 by judgment dated 28.04.2011.

2.The complainant / respondent has filed a private complaint against the petitioner / accused that petitioner and the complainant are close friends. The petitioner has borrowed a sum of Rs.4,00,000/- on 21.02.2004 from the complainant for his family expenses and he has also executed a promisory note in favour of the complainant. Since the petitioner has not repaid the loan, the complainant has issued a notice on 14.02.2007 to the petitioner and thereafter, on 19.02.2007 the petitioner has paid a sum of Rs.1,50,000/- and for the balance amount he has issued a cheque dated 19.02.2007 and requested the complainant to present the same for collection after a period of two months and accordingly, the complainant has presented the cheque for collection on 07.06.2007, but the cheque got dishonoured on the ground of insufficient funds on 04.05.2007. The petitioner informed the complainant that he would arrange the amount and asked him to present the cheque on 07.06.2007 and when the cheque was presented it was returned on 15.06.2007 on the ground 'insufficient funds', hence, the complaint under Section 138 of NI Act was lodged.

3.The trial Court in conclusion of the trial, found the petitioner guilty under Section 138 of NI Act and convicted and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.1,000/- and in de fault of payment of fine amount, three months simple imprisonment was also ordered. As against the conviction and sentence imposed against the petitioner, he has filed an appeal in Criminal Appeal No.27 of 2010 before the learned Additional District and Sessions Judge, (FTC-II), Pattukkottai and the appellate Court by order dated 29.04.2011 dismissed appeal and confirmed the conviction and sentence imposed on the petitioner by the trial Court.

4.Heard Mr.S.Deenadhayalan, learned Counsel for the petitioner and Mr.Subash Babu, learned Counsel appearing for the respondent.

5.The learned Counsel for the petitioner has raised the following grounds:

(i) There is no legally enforceable debt between the complainant and the accused.

(ii) On the alleged date of borrowal the petitioner was not in India and he was in abroad and ExD1 would disclose the same.

(iii) The alleged cheque has been issued by the petitioner to one Omprakash for the purpose of security and the same has been misused in this case.

(iv) The statutory notice as mandated under Section 138(1) of NI Act has not been served on the petitioner and the endorsement in Ex.P11 that 'party left Kasanadu returned to sender' would corroborate the same.

(v) The cheque is time barred one and hence, Section 138 of NI Act is not attracted.

6.Per contra, the learned Counsel for the complainant / respondent submitted that the signature found in the cheque Ex.P1 has not been denied by the accused and the accused has stated that on the date of borrowal on 21.02.2004, he was not in India and therefore, this complaint is a false complaint and contrary to the same, in the cross examination the accused has stated that out of Rs.4,00,000/- borrowed by him, he has paid Rs.3,00,000/- to the complainant and the balance amount has been given by way of cheque in the name of Akbar Hajiyar. The contention of the accused that on the date of borrowal he was not in India cannot be accepted, since the reference to the Passport and the entries made therein, has been cancelled. Therefore, the learned Counsel prayed for dismissing the appeal.

7.This Court has paid its best attention to the rival submission and considered the materials placed on record.

8.The main contention of the petitioner is that on the date of borrowal he was not in India and in support of this he has produced his original passport, which is marked ExD1. However, this contention has not been accepted by the Courts below on the reason that it is not explained as to why and when the passport has been cancelled and the complainant has denied the entries made therein as false and the accused has also failed to prove the entries relating to the period when the accused claimed to be in Malaysia between 20.02.2004 and 27.02.2004 in the manner known to law. According to the complainant / respondent, the the accused has not denied the cheque and he has admitted the signature in the cheque.

9.The reasons assigned by the Courts below with regard to ExD1 are not acceptable and ExD1 passport can be taken into account as a valid document. Even the endorsement of the issuing authority that the passport is cancelled, cannot invalidate the document wholly. As pointed out by the learned Counsel for the petitioner, while issuing fresh passport, the authorities have cancelled the earlier passport and while being so, the entries made in the earlier passport ExD1 cannot be discarded totally.

10.The question before this Court is whether the cheque has been issued for legally enforcable debt or not?. According to the complainant, the accused borrowed a sum of Rs. 4,00,000/- on 21.02.2004 and paid a sum of Rs.1,50,000/- and for the balance amount he has issued a cheque [ExP1] dated 19.02.2007. According to the learned Counsel for the accused, the accused was not present in India on 21.02.2004, therefore, the question of borrowal as alleged by the complainant does not arise. However, during the trial, a specific stand has been taken by the accused that he borrowed a sum of Rs.4,00,000/- and he has also repaid the amount, however, the blank cheque was issued as collateral and with the cheque the complaint has been foisted against him. When the liability has been accepted by the accused, during the trial and in the absence of any material, how it has been discharged, the accused cannot take advantage with regard to the date on which, the money was repaid.

11.Therefore, this Court does not find any reason to interfere with the orders of the Courts below. However, considering the age of the petitioner and also other given circumstances, the sentence of imprisonment imposed by the trial Court in C.C.No.930 of 2007 is modified from one year to six months.

12.In the result, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

To

1. The Additional District
   and Sessions Judge, (FTC-II),
   Pattukottai

2. The Judicial Magistrate,
   Pattukottai

3. The Chief Judicial Magistrate,
   Thanjavur at Kumbakonam.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.S.DEENADHAYALAN, Advocate (SR-89586[F]dated 26/09/2019)

Crl.R.C(MD)No.550 of 2011
25.09.2019

VB(29.01.2020) 4P 7C