

**BAIL SLIP**

Revision Petitioner/Accused, namely M.P.Sekar, S/o.Pitchai was directed to be released on bail in and by the order of this Court dated 14.06.2018 made in Cr1 MP(MD)No.4330 of 2018 in Cr1 RC(MD) No.315 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.01.2019

CORAM :

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

CRL.R.C.(MD)No.315 of 2018

M.P.Sekar

...Petitioner

Vs.

Francis Joseph

...Respondent

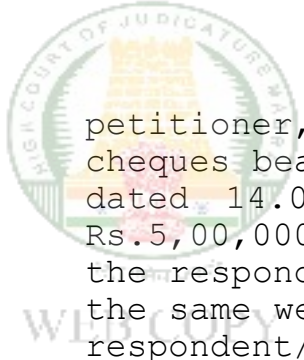
Prayer: Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., to call for the records pertaining to the case in C.A.No.12 of 2017 on the file of the Principal District and Sessions Judge, Ramanathapuram by judgment dated 06.03.2018 and set aside the same.

For Petitioner : Mr.S.Ramasamy
For Respondent : Mr.J.Jeyakumaran

ORDER

This Criminal Revision Case has been filed against the judgment made in C.A.No.12 of 2017 on the file of the learned Principal District and Sessions Judge, Ramanathapuram, dated 06.03.2018.

2.The complainant is the respondent herein and the accused is the revision petitioner. The case of the respondent is that he was running a Commission Agent shop in the name and style of Sagayamary Trading Company by selling red chilly and coriander. The appellant is running a Nivetha Traders and had business transactions with the respondent / complainant and used to purchase red chilly in wholesale and in retail and they had business transactions as on 30.06.2013. There was a due of Rs.18,80,000/- from the revision



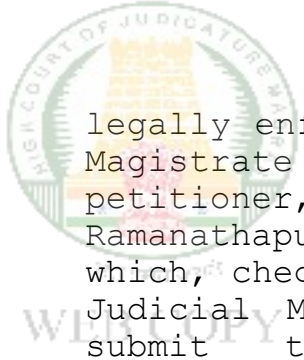
petitioner, for which, the revision petitioner has issued four cheques bearing Nos.00019 dated 03.03.2014 for Rs.5,00,000/-, 000110 dated 14.03.2014 for Rs.5,00,000/-, 000111 dated 24.03.2014 for Rs.5,00,000/- and 000112 dated 12.03.2014 for Rs.3,80,000/-. When the respondent presented the cheque for collection on 03.04.2014 and the same were returned for want of sufficient funds. Thereafter, the respondent/ complainant issued Advocate notice on 10.04.2014. After receiving the notice on 11.04.2014, the revision petitioner herein neither repaid the borrowed money nor sent any reply. Therefore, the complainant / respondent herein filed a complaint before the learned Judicial Magistrate Court No.I, Ramanathapuram, for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. In order to prove the case of the complainant, on the side of the complainant / respondent herein, P.W.1 was examined and Ex.P.1 to Ex.P.10 were marked. No material objects were marked.

4.After completion of the prosecution evidence, when the incriminating materials culled out from the prosecution witnesses were put before the petitioner / accused, he denied them as false. On the side of the petitioner / accused, D.W.1 and D.W.2 were examined. No documentary evidence and material objects were marked.

5.After taking cognizance of the complaint, the trial Court after completing formalities, considering the available evidence both oral and documentary, found the accused was not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act. Against which, the respondent/complainant has preferred an appeal before the Principal District and Sessions Court, Ramanathapuram in C.A.No.12 of 2017 and the learned Principal District and Sessions Judge, Ramanathapuram, after hearing the arguments, allowed the appeal by reversing the judgment of the learned Judicial Magistrate No.I Ramanathapuram and found that the offence under Section 138 of Negotiable Instruments Act has been proved against the revision petitioner / Accused and has convicted and sentenced to undergo two years simple imprisonment and also to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment and also ordered compensation of Rs.10,00,000/- and the same was given to the respondent herein within one month. Against which, the revision petitioner has preferred the present revision.

6.The learned Counsel for the petitioner would submit that the respondent was running a Commission Agent shop by selling red chilly and coriander. The revision petitioner is also running Nivetha Traders and he purchased red chilly from the respondent / complainant in wholesale and in retail. Though the revision petitioner admitted the business transactions, he issued cheques only for security purpose and there is no due to the respondent and further there is no need to issue four cheques. Though the revision petitioner admitted the business transactions but denied the consideration amount and the cheque was not issued to discharge

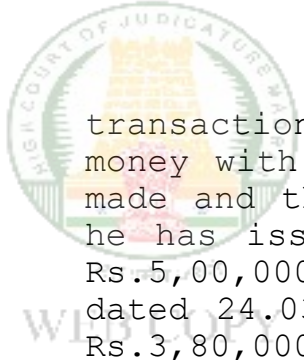


legally enforceable debt or liability. Though the learned Judicial Magistrate appreciated the evidence and acquitted the revision petitioner, the learned Principal District and Sessions Judge, Ramanathapuram failed to consider the business transactions, for which, cheques were issued and set aside the judgment of the learned Judicial Magistrate and allowed the appeal. Further, he would submit that mere admission of execution of cheques is not enough to convict the accused under Section 138 of Negotiable Instrument Act. It is for the complainant to prove that the cheque was issued to discharge the legally enforceable liability or debt. So, in this case the revision petitioner was examined as R.W.1, he has clearly stated that the cheques were not issued by him to the respondent for legally enforceable debt and the cheques were issued only for security purpose for the business transactions. There is no due and there is no statement of records filed by the respondent / complainant to show that dues to be paid by the revision petitioner to the respondent / complainant. The accused have taken the defence that the cheques were materially altered and he has not issued the cheque for legally enforceable debt. Therefore, he is not liable to pay the amount. The learned Sessions judge refused to accept the defence of the accused and found that there is a presumption that the cheque was issued for discharging legally enforceable debt. The execution of cheque is proved. Once the execution of the cheque is proved, it is for the accused to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Therefore, the judgment of the learned Sessions Judge warrants interference.

7.The learned counsel appearing for the respondent would submit that the petitioner admitted the signature and execution of cheques and also business transactions between the petitioner and the respondent and therefore, once admitted the business transactions and the respondent also filed document to show that they had business transactions and also the receipt given by the revision petitioner that dues have to be paid to the respondent and discharging that amount he has issued cheques. At the request of the revision petitioner, the cheques were presented for collection and the same were returned and the said fact was duly intimated to the respondent by way of statutory notice. Despite received the notice neither he paid the money nor he sent any reply by stating valid reason. Therefore, under these circumstances, though the learned Magistrate failed to appreciate the evidence of the respondent / complainant and the Appellate Court learned Sessions Judge rightly appreciated the evidence and set aside the judgment of the Trial Court. Hence the Appellate Court has rightly convicted the accused and there is no merits in this revision.

8.Heard the learned Counsel appearing for the revision petitioner and the learned Counsel appearing for the respondent / Complainant.

9.It is not in dispute that the respondent running a commission agent and the revision petitioner had a business



transactions by purchasing red chilli. At that time, there was no money with the revision petitioner, so there was a credit purchase made and the revision petitioner has not paid the money for which, he has issued four cheques bearing Nos.00019 dated 03.03.2014 for Rs.5,00,000/-, 000110 dated 14.03.2014 for Rs.5,00,000/-, 000111 dated 24.03.2014 for Rs.5,00,000/- and 000112 dated 12.03.2014 for Rs.3,80,000/-. When the respondent presented the cheque for collection on 03.04.2014 and the same was returned and dishonoured. Therefore, once the business transactions are admitted and also the signature in the cheques are admitted and not denied by the revision petitioner/Accused, execution of the cheques are also proved by the complainant / respondent herein. Once the execution of the cheque is proved, it is for the accused to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. In this case the respondent / complainant produced the receipt Ex.P.1 it is stated to be issued by the revision petitioner and for which he has received cheques. Therefore, under these circumstances, once the respondent / complainant proved that the cheques were issued for legally enforceable debt or liabilities, it is for the petitioner to rebut the presumption that the cheques were not issued for legally enforceable debt or liabilities. Though the defence taken by the revision petitioner that the cheques were not issued for legally enforceable debt and the signature alone admitted, the cheques were filled by the respondent in another ink. So mere alteration of the cheque and filling the cheque is not a ground to disbelieve the case of the complainant.

10.The Appellate Court has come to the conclusion that Accused/ revision petitioner herein involved in purchasing of red chilli on credit basis and issued the cheques. Though the defence taken by accused / revision petitioner herein that the cheque was materially altered, this was not proved by the revision petitioner herein. Once signature in the cheque is admitted and not denied by the revision petitioner, execution of the cheques are also proved by the complainant / respondent herein. Once the execution of the cheque is proved, it is for the accused to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. The cheques were issued for legally enforceable debt or liabilities, which has not been rebutted by the revision petitioner in the manner known to law. Therefore, under these circumstances, while exercising the revisional jurisdiction, this Court has to see whether there is any perversity in appreciating the evidence in deciding the case.

11.On a reading of the entire oral and documentary evidence and the judgment of the Appellate Court, this Court does not find any perversity in appreciating the evidence or interpreting the provisions. In view of the above, this Court does not find any reason or sound ground to set aside the judgment of the Appellate Court and there is no merit in this criminal revision case.

12.Accordingly, this criminal revision case is dismissed. The learned Judicial Magistrate No.I, Ramanathapuram is directed to



take steps to secure the revision petitioner/Accused, namely, M.P.Sekar to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar (CS)

To

- 1.The Principal District and Sessions Judge,
Ramanathapuram.
- 2.The Judicial Magistrate Court No.I,
Ramanathapuram.
- 3.The Chief Judicial Magistrate,
Ramanathapuram
- 4.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1cc to Mr.J.JEYAKUMAR, Advocate, SR.No.41687

+1cc to Mr.S.RAMASAMY, Advocate, SR.No.41236

CRL.R.C.(MD)No.315 of 2018

RM

KK/SAR/12.04.2019/ 5P- 8C