Bail Slip

The Petitioner namely Stalin, S/o.Kannayyanaidu, was released on bail as per the order of this Court dated 02.02.2015 made in MP (MD).No.1 of 2014 in Crl.RC(MD).No.469/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C.(MD)No.469 of 2014

Stalin .. Petitioner

Vs.

Manimegalai .. Respondent

PRAYER: Criminal Revision filed under Section 397 read with 401 of the Criminal Procedure Code to call for the records relating to the order passed in C.A.No.60 of 2013, dated 18.09.2014, by the learned Sessions Judge, Thanjavur and set aside the order of conviction and sentence.

For Petitioner : Mr.P.T.Ramesh Raja for Mr.A.Robinson

For Respondent : Mr.V.Chandrapandy

ORDER

This criminal revision case is filed as against the conviction and sentence imposed upon the petitioner / accused by the trial Court as well as the appellate Court in a complaint instituted under Section 138 of the Negotiable Instruments Act.

2. The respondent / complainant has filed a complaint against the petitioner / accused for the offence under Section 138 of the Negotiable Instruments Act. The trial Court, namely, Fast Track Court (Magistrate Level), Thanjavur, in conclusion of the trial, in C.C.No.215 of 2011, found this petitioner / accused guilty for the offence and by order dated 31.07.2013, convicted and sentenced him to undergo simple imprisonment for one year and to pay a compensation of Rs.1,00,000/-, i/d to undergo simple imprisonment for three months. As against the same, the petitioner / accused preferred an appeal before the Sessions Court, Thanjavur and the same was dismissed in C.A.No.60 of 2013, dated 18.09.2014. Aggrieved over the same, the present revision case is filed.

3. The case of the respondent / complainant is that the accused is a family friend and for his business expenses, on 01.07.2006, the accused approached the complainant and borrowed a sum of Rs.1,00,000/-, with an undertaking that he would repay the same with 12% interest per annum and he also executed a pronote [Ex.P1] on the same day in the presence of witnesses. But the accused failed to repay the principal amount as well as the interest and after persuasion, the accused had issued a post dated cheque, bearing No.932860, dated 02.04.2007, in discharge of his liability of Rs.1,00,000/-. The Cheque, on presentation, was returned for the reason 'insufficient funds' on 23.04.2007 and thereafter, the complainant issued a statutory notice as required under Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act on 05.05.2007, for which, the accused gave a reply through his Counsel on 17.05.2007 by denying the allegations and also making certain allegations. Therefore, the complainant has preferred the complaint in C.C.No.215 of 2011.

4. During the trial, the complainant was examined as PW1 and the complainant's Bank Manager was examined as PW2. Eleven documents were also marked on the side of the complainant. The accused marked Ex.R1 to R3, through the Bank Manager [PW2]. In conclusion of the trial, the trial Court, by order dated 31.07.2013, found this petitioner guilty under Section 138 of the Negotiable Instruments Act; convicted and sentenced him as stated supra.

5. Heard Mr.P.T.Ramesh Raja, learned Counsel for Mr.A.Robinson, learned Counsel on record for the petitioner / accused and Mr.V.Chandrapandy, learned Counsel for the respondent / complainant.

6. The learned Counsel for the petitioner would submit that the said loan amount, which was borrowed on 01.07.2006, was duly repaid by the accused on 24.08.2006, by depositing the same in the account of the complainant. This was also brought to the knowledge of the trial Court by marking the complainant's bank account statement [Ex.R1]; the copy of the deposit slip dated 24.08.2006 [Ex.R2]; and the deposit challan dated 24.08.2006 [Ex.R3]. That apart, there was a exchange of notice between the accused as well as the complainant, on 10.03.2007, wherein, this petitioner has issued a legal notice to the respondent / complainant, calling upon him to return all the five blank cheque leaves and signed blank stamp papers and blank signed white sheets within three days from the date of receipt of the notice. In that notice, the petitioner / accused has also made certain averments as if the complainant is claiming exorbitant interest.

7. In reply to the same, the respondent / complainant issued a reply notice on 27.03.2007, wherein, she admitted a transaction said to have taken place, subsequent to this transaction, in the month of September, 2006 and according to her, that amount was also repaid on

03.10.2006. Therefore, there were two transactions between the complainant and the accused and both the transactions, according to the petitioner / accused, have been duly repaid and there is no legally enforceable debt and moreover, the petitioner / accused has made a claim for return of blank cheques, which have been obtained by the complainant at the time of lending the money. Without appreciating these material facts, both the Courts below have erred in convicting the petitioner and therefore, the learned Counsel prays for interference.

8. Per contra, the learned Counsel for the respondent / complainant vehemently opposed that the case of the complainant has been establishment beyond any reasonable doubt and both the Courts below have concurrently found the accused guilty under Section 138 of the Negotiable Instruments Act. According to the learned Counsel, this sum of Rs.1,00,000/- borrowed by the accused on 01.07.2006 has been admitted by him in the notice dated 10.03.2007 and moreover, there is no proof, whatsoever, that this amount has been repaid and there is no explanation for him for issuing this cheque dated 02.04.2007. According to him, the cheque dated 02.04.2007, which was given as a post dated cheque, on presentation, was returned as 'insufficient funds' and even after issuance of a notice as required under Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, the accused failed to make the payment and therefore, the offence is made out against the accused, as rightly held by both the Courts below. Therefore, the learned Counsel prays for dismissal.

9. This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

10. The complaint is filed for dishonour of cheque for the liability of Rs.1,00,000/-, which was borrowed by the accused from the complainant on 01.07.2006. There is no dispute with regard to the transaction took place on 01.07.2006. The sum of Rs.1,00,000/- was lent as a loan with a condition that it must be repaid with 12% interest. At the time of borrowing, a promissory note was also executed by the accused, which was marked as Ex.P1. Perusal of the same would disclose that the amount was borrowed with a condition that it would be repaid at 12% interest. In discharge of that liability, the accused is said to have issued the cheque in dispute [Ex.P2].

11. There is no evidence as to when this cheque [Ex.P2] was issued. But, according to the complainant, this cheque [Ex.P2] was issued as a post dated cheque. When the accused has executed a pronote [Ex.P1] as on the date of borrowal, there is no reason as to why the cheque was issued subsequently. If the cheque was issued subsequently as a post dated cheque, there is no evidence available as to when this cheque [Ex.P2] was issued by the accused.

12. There was a strained relationship between the accused and the complainant, prior to the issuance of the cheque dated 02.04.2007. The accused had issued a legal notice to the complainant on 10.03.2007 [Ex.P9], calling upon the complainant to return the five blank cheques and blank stamp papers, which were obtained from the accused by the complainant. In the notice dated 10.03.2007 [Ex.P9], the accused had also made certain allegations against the complainant that she is claiming exorbitant interest. In reply to the same, the complainant has issued a reply notice on 27.03.2007, wherein, she referred about a subsequent transaction of Rs.1,80,000/- took place on September, 2006 and according to her, the said amount of Rs.1,80,000/- was repaid by the accused on 03.10.2006. This cheque dated 02.04.2007 emanates only after this exchange of notices dated 10.03.2007 and the reply notice dated 27.03.2007. This exchange of notices between the parties was not referred to in the complaint filed by the complainant.

13. Even according to the complainant, there were two transactions. One transaction is of Rs.1,00,000/- as on 01.07.2006 and the another transaction of Rs.1,80,000/- as on September, 2006. According to the reply notice dated 27.03.2007, the second liability of Rs.1,80,000/- was repaid by the accused on 03.10.2006. With regard to the liability of Rs.1,00,000/-, which was borrowed on 01.07.2006, the accused has examined the Bank Manager of the complainant and through him, the statement of account of the complainant was marked as Ex.R1. That apart, the challan and the receipt for the payment of Rs.1,00,000/- by the accused in the complainant's bank on 24.08.2006 was established through Exs.R2 & R3. Exs.R2 & R3 are the certified copies of the deposit slip and deposit challan, respectively, marked through the Manager of the complainant's bank. When there are evidence that the sum of Rs.1,00,000/- as claimed by the complainant, which was lent by her as on 01.07.2006, was duly repaid by the accused in the bank account of the complainant as on 24.08.2006, there is no legally enforceable debt as against this petitioner / accused for issuing the cheque dated 02.04.2007.

14. Moreover, the accused had taken a specific stand by way of his notice dated 10.03.2007 that the accused, after repaying the amount, in order to collect exorbitant interest, has retained the blank cheques, pronote, blank stamp papers, which were obtained by her during the borrowal and demanded for return of the same. Only after the strained relationship, ie., after the issuance of the legal notice of the accused on 10.03.2007, this cheque emanates on 02.04.2007 and the complaint was filed by issuing the notice on 05.05.2007. As stated supra, the complainant has suppressed the earlier exchange of notices between her and the accused as on 10.03.2007 and 27.03.2007 and there is no reason for the same.

15. The Deposit Slip and the Challan, namely, Exs.R2 & R3 are marked as true copies of original, through the Bank Manager, who certified it to be the true copies. That apart, the bank statement of the complainant is marked as Ex.R1, which clearly reveals that the sum of Rs.1,00,000/-, was deposited by the accused in the account of the complainant. When the bank statement is available, no other presumption can be inferred as against the accused that he has not repaid the amount.

16. In view of the foregoing discussions, this Court is inclined to interfere with the impugned order of conviction and sentence. Accordingly the order passed by the learned Sessions Judge, Thanjavur, in C.A.No.60 of 2013, dated 18.09.2014, confirming the conviction and sentence imposed by the learned Magistrate, Fast Track Court, Thanjavur, in C.C.No.215 of 2011, dated 31.07.2013, are set aside and the petitioner is acquitted of the charge framed against him. Fine amount, if any paid, shall be refunded. Bail bonds, if any executed, shall stand terminated.

17. In fine, this Criminal Revision Case stands allowed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

To

1.The Sessions Judge, Thanjavur.

2.The Judge, Fast Track Court (Magistrate Level),
Thanjavur.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:
The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.ARUN PRASAD, Advocate (SR-95721[F] dated 04/11/2019)

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01.11.2019

JMN(26.02.2020) 5P : 7C