



Bail Slip

Lakshmanan, Appellant/Accused S/o.Mookkapillai, Male aged about 59 (at 2012) is released on Bail vide Court order dated 04.03.2013 made in MP(MD).No.1 of 2013 in CRL RC(MD).NO.39 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.R.C(MD) .No.39 of 2013

Lakshmanan ... Petitioner/Appellant/Accused

Vs

Ramadurai ... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 Code of Criminal Procedure, to call for the records and set aside the conviction and the sentence imposed on the petitioner by the learned Judicial Magistrate II, Kuzhithalai in C.C.No.173 of 2003, dated 03.05.2011 and confirmed by the Sessions Judge, Karur in C.A.No.22 of 2011, dated 06.10.2012.

For Petitioner : No appearance

For Respondent : Mr.H. Lakshmi Sankar

ORDER

There is no representation on the side of the revision petitioner / accused. The original counsel, who filed the revision case did not appear before this Court. Therefore, this Court appointed a Legal Aid counsel. The Legal Aid counsel has also not appeared. Therefore, this Court has no other option except to read the materials on record and dispose of the revision case.

2. The respondent herein filed C.C.No.173 of 2003, on the file of the learned Judicial Magistrate No.II, Kuzhithalai, against the petitioner herein for the offence under Section 138 of



Negotiable Instruments Act.

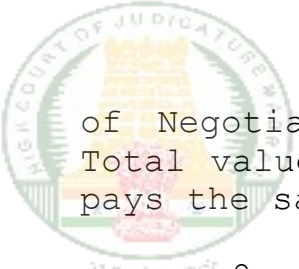
3. It is seen that the revision petitioner had issued two cheques Exs.P1 and P2 for a sum of Rs.34,243/- and Rs.26,119/- respectively. The same were presented for collection by the complainant on 18.02.2003. The Bank has returned the cheques with an endorsement "In-sufficient fund". The complainant issued Ex.P6 - legal notice and the same was received by the accused on 11.03.2003 and he caused to issue a reply notice on 23.04.2003. Since the demand set out in the statutory notice is not complied with, the complainant filed C.C.No. 173 of 2003. On the side of the complainant, PW.1 to PW.3 were examined. Exs.P1 to P9 were marked. On the side of the accused, no witness was examined and no evidence was adduced.

4. The learned Trial Magistrate on 03.05.2011 found the petitioner / accused guilty of the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo Simple Imprisonment for a period of 1 year and also levied fine of Rs.1,000/-, in default to undergo 3 months Simple Imprisonment and the same was confirmed in C.A.No. 22 of 2011, on the file of the learned Sessions Judge, Karur, on 06.10.2012. Challenging the same, this Criminal Revision has been filed.

5. In the memo of grounds, it has been contended that the complainant failed to discharge the burden cast on him and that the Court below failed to consider the evidence and law in proper perspective.

6. The case of the complainant is that he had planted plantains and the accused was allowed to remove them for valuable consideration. According to the complainant, the cheques in question were issued towards sale consideration. Though P.W.1, in his chief examination stated that he is having 10 acres of land, he admitted in his cross examination that he has only 2 acres of land. Though the complainant was cross examined extensively and suggestion was put to the effect, that the cheques in question were issued to some other third parties and the same was put to use in his case and there was no transaction as suggested in the complaint, the complainant stood his ground. Be that as it may, the Court below referred to the stand taken in the reply notice Ex.P8. In the reply notice, the accused had taken the stand that he had borrowed a sum of Rs.10,000/- and that the cheques in question were issued as security. Thus, the signatures attributed to the complainant's cheques stand admitted.

7. In these circumstances, the presumption was rightly raised under Section 139 of Negotiable Instruments Act in favour of the holder of the cheques. It is relevant to note that the accused did not step into the Witness Box. The Courts below have rightly found the accused guilty of the offence under Section 138



of Negotiable Instruments Act. The cheques are two in number. Total value is Rs.60,362/-. I am of the view that if the accused pays the said amount, he can be spared from going to the prison.

8. In this view of the matter, the sentence and fine imposed on the petitioner is set aside. The petitioner is directed to deposit the cheque amount of Rs.60,362/- (Rupees Sixty Thousand and Three Hundred and Sixty Two only), as compensation, to the credit of C.C.No.173 of 2003, on the file of the learned Judicial Magistrate No.II, Kulithalai, within a period of two months from the date of receipt of a copy of this order. The same can be withdrawn by the respondent / complainant. If the petitioner fails to do so, even after initiation by the trial Court the sentence and fine imposed by the Courts below will stand automatically restored.

9. With the above modification, the Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate II,
Kuzhithalai.

2. The Sessions Judge, Karur.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-68431[F] dated 13/06/2019)

Crl.R.C (MD) .No.39 of 2013
12.06.2019

trp

AE/ (26.07.2019) 3P 4C