

Bail Slip

The Appellant/Accused namely L.Harichandran, aged about 54 years, S/o.Lakshmana Perumal, was directed to be released on bail as per order of the Court dated 06.01.2014 and made in MP(MD).No.1 of 2013 in Crl.RC(MD).No.711 of 2013 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL RC(MD)No.711 of 2013

L.Harichandran ... Petitioner / Appellant / Accused

Vs.

G.Dhamotharan ... Respondent / Respondent /Complainant

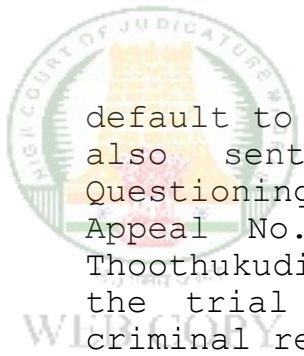
Prayer : This Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to call for the records of the II Additional Sessions Court, Thoothukudi in Crl.A.No.36 of 2013 by its Judgment dated 10.07.2013 confirming the conviction and sentence of imprisonment for one year rigorous imprisonment and to pay a compensation of Rs.10.00 lakhs to the complainant under Section 357 (3) Cr.PC in default to undergo simple imprisonment for three months for an offence under Section 138 of the Negotiable Instruments Act, passed by the learned Fast Track Judicial Magistrate (Magisterial Level), Kovilpatti in C.C No.219 of 2012 by its judgement dated 03.04.2013 and set aside the judgments of the courts below.

For Petitioner : Mr.Jameel Arasu, Amicus Curiae

For Respondent : M/s.Porkodi Karnan for
Polax Legal Solutions

ORDER

The respondent herein filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner herein/accused. The same was transferred and renumbered as C.C No.219 of 2012 on the file of the learned Fast Track Judicial Magistrate (Magisterial Level), Kovilpatti. The learned Trial Magistrate by judgment dated 03.04.2013 found the revision petitioner/accused guilty of the offence under Section 138 of the Act and directed him to pay compensation of Rs.10.00 lakhs or in



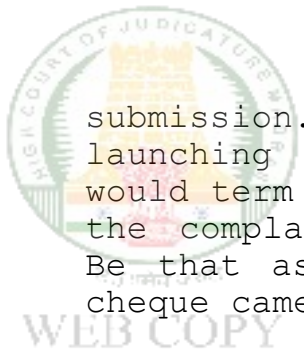
default to suffer three months simple imprisonment. The accused was also sentenced to undergo one year rigorous imprisonment. Questioning the same, the revision petitioner herein filed Criminal Appeal No.36 of 2013 before the II Additional Sessions Judge, Thoothukudi. By judgment dated 10.07.2013, the judgment passed by the trial magistrate was confirmed. Questioning the same, this criminal revision case has been filed.

2. When the matter was taken up for hearing, the learned counsel for the petitioner did not enter appearance. He filed his withdrawal memo. Therefore, this Court directed the Registry to appoint a legal aid counsel. Accordingly, Thiru. Jameel Arasu, the learned counsel appeared on behalf of the petitioner and he reiterated all the contentions set out in the memorandum of grounds. He wanted this Court to set aside the judgments passed by the courts below. The learned counsel appearing for the complainant argued in support of the judgments passed by the courts below.

3. I carefully considered the rival contentions. The case of the complainant is that the accused had borrowed a sum of Rs.7.00 lakhs from him on 27.09.2005 and promised to repay the said amount within a period of six months. In that regard, he issued Ex.P1 post dated cheque dated 27.03.2006. The complainant presented the same for collection on the same day with his banker. But, the same was returned unpaid for the reason insufficient funds in the account of the accused. Thereupon, the respondent herein sent Ex.P4 legal notice to the correct address of the accused. The petitioner/accused however did not choose to receive the same. It was returned with the endorsement "not claimed". Therefore, the private complaint was filed by the respondent/complainant herein before the trial magistrate. In the trial, the complainant examined himself as P.W.1 and marked Exs.P1 to P6. On the side of the accused, no evidence was adduced.

4. The learned counsel appearing for the revision petitioner would contend that the financial capacity of the complainant was challenged and that the complainant has not come forward with credible explanation. I am of the view that putting a mere or formal challenge questioning the financial capacity is not sufficient. The accused was bound to have come with a probable defence as to how the complaint cheque reached the hands of the complainant. This is because the accused has not denied the signature attributed to him in Ex.P1 cheque. Therefore, the courts below were justified in raising the presumption under Section 139 of the Negotiable Instruments Act, 1881. In this case, the accused has not at all rebutted the presumption raised in terms of Section 139 of the Act.

5. The learned counsel for the petitioner would claim that the cheque given for security purposes cannot be utilized for launching a private complaint. I regret my inability to agree with the



submission. A post dated cheque can also be very much used for launching a private complaint. While the petitioner's counsel would term the cheque in question as one given for security purpose, the complainant's counsel would call it as a post dated cheque. Be that as it may, the accused has not explained as to how the cheque came to be given for security purpose.

6. In these circumstances, this Court has to necessarily sustain the findings of guilt arrived at by the courts below. Now, coming to the questioning of sentence, I am of the view that sentencing the accused to one year rigorous imprisonment and directing him to pay the compensation amount is too harsh. Accordingly, the conviction rendered by the courts below is confirmed and the sentence of imprisonment alone is set aside. In all other respects, the judgments passed by the courts below are confirmed. The revision petitioner/accused is directed to pay the cheque amount of Rs.7,00,000/- as compensation to the credit of C.C No.219 of 2012 on the file of the Fast Track Judicial Magistrate (Magisterial Level), Kovilpatti, within a period of eight weeks from the date of receipt of a copy of this order. Failing which he will have to undergo default sentence of six months simple imprisonment.

7. With this modification, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

Skm

To

1. The II Additional Sessions Judge, Thoothukudi.
2. The Fast Track Judicial Magistrate (Magisterial Level), Kovilpatti.
3. Do through The Principal Sessions Judge, Tuticorin.

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



+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-71183[F] dated 25/06/2019)

+2 CC to M/s.B.JAMEEL ARASU, Advocate (SR-71170[F] dated 25/06/2019

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CRL RC (MD) No. 711 of 2013

24.06.2019

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