BAIL SLIP

The Appellant herein/Accused Viz; V.Raja, S/o.Venugopal was enlarged on bail as per order of this court dated 23.01.2018 made in Crl.MP.No.259/2018 in Crl.RC.No.40/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Orders Reserved 14.12.2020	Date of Orders Pronounced 30.12.2020

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.RC.No.40 of 2018

V.Raja ... Petitioner/Accused

Vs.

Lakshmikanthan ... Respondent/Complainant

Criminal Revision Petition is filed under Sections 397 & 401 of Criminal Procedure Code, to call for the records and set aside the Judgment of the Appellate Court made in C.A.No.82 of 2016 dated 30.11.2016 on the file of the Learned XIX Additional Sessions Judge, Chennai, in dismissing the appeal and confirming the conviction and sentence passed by the Learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Chennai - 600003 by Judgment dated 08.03.2016 in C.C.No.2528 of 2012, convicting him for the alleged offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo one year simple imprisonment as per Section 255(2) Cr.P.C., and further directing the petitioner herein to pay the cheque amount of Rs.3,00,000/- to the respondent herein as compensation under Section 357(3) Cr.P.C., within two months from the date of Judgment dated 08.03.2016, in default to pay the said compensation amount, to undergo 3 months simple imprisonment.

For Petitioner : M/s.D.N.Dhurga Sha

For Respondent : Mr.A.M.Rahamath Ali

ORDER

This Criminal Revision Petition is directed against the Judgment of the Learned XIX Additional Sessions Judge in Criminal Appeal No.82 of 2006 in confirming the Judgment of the Learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Chennai, in C.C.No.2528 of 2012.

2. The respondent as a complainant filed a complaint against the petitioner for the offence under Sections 138 and 142 of the Negotiable Instruments Act.

3. It is seen from the case of the respondent that the petitioner agreed to sell the property situated in Velacherry, Chennai, comprised in New Survey No.621/1A and entered into a sale agreement with the respondent on 18.11.2010 for Rs.21,76,000/-. He received a sum of Rs.2,05,000/- as advance. However, he was unable to sell the property due to some other finance taken from the other financiers. Therefore, he agreed to return the advance of Rs.2,05,000/- with damages and he issued a cheque for Rs.3,00,000/- drawn on Karur Vysya Bank, Purasawakkam, Chennai, on 01.08.2011.

4. The respondent presented the cheque through the Indian Overseas Bank, Esplanade Branch, Chennai. The cheque was returned with the endorsement "No Sufficient Funds" on 03.08.2011. The respondent issued a legal notice dated 16.08.2011 requesting the petitioner to pay the sum of Rs.3,00,000/-. The petitioner received the notice on 20.08.2011, but he neither paid the money nor sent any reply. Therefore, the complaint was filed by the respondent. After the petitioner entered appearance, he was questioned with regard to substances of accusation found against him, but he denied the offence alleged against him and demanded trial.

5. During the trial before the trial court, the respondent examined himself as P.W.1 and marked Exs.P1 to P6. There was no evidence on the side of the petitioner.

6. The respondent reiterated the complaint averments when giving evidence during the course of trial. On considering the oral and documentary evidence available, the Learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Chennai, found the petitioner guilty under Section 138 of the

Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and directed him to pay a sum of Rs.3,00,000/- as compensation to the respondent, in default to pay the compensation, to undergo simple imprisonment for three months.

7. As against the Judgment of the Learned Metropolitan Magistrate, the petitioner preferred an appeal in C.A.No.82 of 2016 on the file of the Learned XIX Additional Sessions Judge, Chennai. The Learned Sessions Judge found no reason to interfere with the Judgment of the Learned Metropolitan Magistrate and dismissed the appeal. Against the said Judgment, this Criminal Revision Petition is filed.

8. The point for consideration in this case is whether the Judgment of the Courts below suffer from any incorrectness, illegality and impropriety in convicting and sentencing the appellant under section 138 of Negotiable Instruments Act?

9. The learned counsel for the petitioner submitted that the cheque in question was only given as a security and it was not intended for discharging any legally enforceable debt or liability. The respondent has not taken any action for enforcing the specific performance of contract either by issuing the notice seeking specific performance of the contract or by filing a suit for enforcing the sale agreement. It is seen from the sale agreement that only a sum of Rs.2,05,000/- was said to have been received as advance. However, the case has been filed on the basis of cheque alleged to have been issued for Rs.3,00,000/-. In fact, the petitioner had issued a notice dated 17.08.2011 to the respondent with an offer to repay the advance amount and cancel the sale agreement. The petitioner has produced additional typed set of papers consisting of 84 pages in support of his argument and submitted that the courts below have not properly appreciated the evidence and wrongly convicted and sentenced the petitioner. Therefore, he prayed for setting aside the judgments of courts below and for acquitting the petitioner by allowing this Revision Petition.

10. Countering the arguments of the learned counsel for the petitioner, the learned counsel for the respondent submitted that the documents filed in additional typed set of papers are created documents. In the alleged subsequent sale agreement dated 09.05.2011, there is no signature of the respondent and also the last para of Page 2 is inserted. The insertion is patently visible because the use of different font size. That is

the reason why the petitioner has not filed the alleged sale agreement dated 09.05.2011 and the notice dated 17.08.2011 before the Trial Court or Appellate Court.

11. The learned counsel for the respondent further submitted that nothing has been stated about the existence of these documents during the course of trial and no reply was sent to the legal notice sent in this case. It is clearly established from the oral and documentary evidence that the petitioner had agreed to sell the property to the respondent and received an advance of Rs.2,05,000/-. When he was not able to perform his part of contract, he issued a cheque towards discharging this liability without having sufficient funds in his account. When the same was presented by the respondent, it was returned as "No Sufficient Funds". Therefore, the offence under Section 138 of the Negotiable Instruments Act was clearly made out and the Learned Trial Judge has rightly convicted and sentenced the petitioner which was confirmed by the Learned Additional Sessions Judge. Hence, the learned counsel for the respondent prayed for dismissal of this petition by confirming the Judgment of the Courts below.

12. As already stated and rightly pointed out by the learned counsel for the respondent, the subsequent sale agreement dated 09.05.2011 alleged to have been entered into between the parties and the notice dated 17.08.2011 alleged to have been sent by the petitioner to the respondent, filed as additional documents now, have not been produced before the Trial Court and marked as Exhibits. The petitioner has not taken steps any before the Learned Additional Sessions Judge to mark these documents as additional documents. Therefore, this Court cannot consider these documents in support of the case of the petitioner. The petitioner has to advance his argument only the on the basis of oral and documentary evidence already produced before the courts below.

13. It is seen from Ex.P1 Sale agreement that the petitioner agreed to sell his property to the respondent for a sum of Rs.21,76,000/- and received a sum of Rs.2,00,000/- as advance, i.e., Rs.1,00,000/- as Cash and Rs.1,00,000/- through Cheque. The petitioner has not disputed the existence of this sale agreement. Admittedly, he was not in a position to execute the sale deed by getting the balance amount for the reason that the property was already mortgaged as put forth by the respondent. Whatever may be the reason, Ex.P1 Sale agreement has not fructified into a sale. Thus, there is no second opinion that the petitioner is liable to return the advance

amount.

14. It is the case of the respondent that Ex.P2 Cheque was given to the respondent for returning the advance amount with damages. The respondent issued Ex.P5 Legal Notice. It has been clearly stated in the said notice that the Cheque for Rs.3,00,000/- was given for returning the advance amount with damages. However, the petitioner has not chosen to send any reply to this notice It is true that in Ex.P1 Sale agreement, a sum of Rs.2,00,000/- was mentioned as advance amount and in Ex.P5 notice, the advance amount is mentioned as Rs.2,05,000/-. Though it is a discrepancy, the cheque amount remains the same as Rs.3,00,000/-. Therefore, I find that this discrepancy will no way create any doubt with regard to issuance of cheque towards discharge of a legally enforceable liability. Though P.W.1 was cross examined at sufficient length, nothing incriminating was elicited from his evidence to suspect or discredit his evidence. Therefore, this Court is of the considered view that the respondent has clearly proved the existence of legally enforceable liability and the issuance of Ex.P2 cheque for discharging the legally enforceable liability and the return of the cheque with an endorsement “No Sufficient Funds” in the account of the petitioner.

15. The learned counsel for the petitioner relied on the Judgment in Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, reported in (2008) 4 SCC 54. In Paragraph No.34 of the said Judgment, the Hon'ble Supreme Court held as follows :

> “34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.”

16. The learned counsel for the petitioner also relied on the Judgment in M.S.Narayana Menon alias Mani Vs. State of Kerala and another, reported in Criminal Appeal No.1012 of 1999. In Paragraph No.55 of the said Judgment, the Hon'ble Supreme Court held as follows :

> "55.........The Appellant clearly said that nothing is due and the cheque was issued by way of security. The said defence has been accepted as probable. If the defence is acceptable as probable the cheque therefor cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act."

17. The learned counsel for the petitioner further relied on the Judgment in P.Krishnasamy Vs. Delta Knit Wearables, reported in (2012) 2 MLJ (Crl) 331, wherein, the Hon'ble Supreme Court held as follows :

> "When the complainant has failed to prove the due execution of the cheque and the legally enforceable liability on the part of accused, accused is entitled for acquittal."

18. The Judgment reported in (2008) 4 SCC 54 was relied for the position that the standard of proof required for rebutting the case of the prosecution is not by proof beyond reasonable doubt but by preponderance of probability. The Judgment in Criminal Appeal No.1012 of 1999 was relied for the position that the cheque issued for security purpose will not fall under Section 138 of the Negotiable Instruments Act. The Judgment reported in (2012) 2 MLJ (Crl) 331 was relied for the position that when the complainant failed to prove the due execution of the cheque and the legally enforceable liability on the part of the accused, the accused is entitled for acquittal.

19. However, as narrated above, the respondent, who is a complainant in this case, has clearly demonstrated and established through oral evidence and Exs.P1 to P6 documets that there was a legally enforceable liability on the part of the petitioner in favour of the respondent and to discharge that legally enforceable liability petitioner issued Ex.P2 cheque and the same was dishonoured for the reason that there was no sufficient funds in his account. The case of the petitioner that the Ex.P2 cheque was issued as a security is not supported by any acceptable and convincing evidence. In this view of the matter, this Court finds none of these Judgments are relevant and applicable to the facts and circumstances of this case.

20. In fine, this Court finds,for the reasons aforesaid, that the Courts below rightly found the petitioner guilty under Section 138 of the Negotiable Instruments Act and rightly convicted and sentenced him to undergo one year simple imprisonment with a direction to pay a compensation of Rs.3,00,000/- and in default to pay the compensation to undergo simple imprisonment for three months. There is no incorrectness, illegality and impropriety in the judgments of the courts below.Therefore, this Court finds no reason to interfere with the Judgment of the Courts below and the same are confirmed.

21. In the result, this Criminal Revision Petition is dismissed and the Trial Court is directed to issue warrant against the petitioner to undergo the sentence.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The XIX Additional Sessions Court,

City Civil Court, Chennai-01

2. The Metropolitan Magistrate,

Fast Track Court No.1, Allikulam, Chennai.

3.The Chief Metropolitan Magistrate
Egmore Chennai (for Information)

CRL.RC.No.40 of 2018

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