Bail Slip

The Petitioner/Accused namely N.S.Babu Naidu S/o Srinivasan Naidu aged about 62 Years was directed to be released on bail as per orders of this Court dated 11/11/2016 made in Crl.M.P.Nos.11988 & 11990/2016 in Crl.R.C.Nos.1350 & 1351 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Revision Case Nos.1350 & 1351 of 2016

N.S.Babu Naidu ... Petitioner in both Crl.R.Cs. / Accused

- Vs. -

V.M.Palani ... Respondent in both Crl.R.Cs. / complainant

Prayer: Petitions filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.Nos.36 and 37 of 2016 dated 18.08.2016, on the file of the learned District and Sessions Judge, Tiruvallur, confirming the conviction under Section 138 of the Negotiable Instruments Act and modifying the sentence from nine months Simple Imprisonment to six months imprisonment and confirming the fine amount of Rs.3,000/-, in default, one month Simple Imprisonment, passed by the learned Judicial Magistrate, Fast Track Court Magisterial Level - II, Poonamallee in C.C.Nos.42 and 43 of 2012, dated 07.04.2016.

For Petitioner (in both Crl.R.Cs.) : Mr. K.Balasubramaniam

For Respondent (in both Crl.R.Cs.) : Mr. M.Prabakar

C O M M O N O R D E R

By judgements, dated 07.04.2016 passed by the Judicial Magistrate, Fast Track Court (Magisterial Level-II), in C.C.Nos.42 and 43 of 2012, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of nine months and further directed to pay a fine of Rs.3,000/-, in default, to undergo Simple Imprisonment for one month (in each of the above Cases). Challenging the said conviction and sentence, the petitioner has preferred appeals in Criminal Appeal Nos.36 and 37 of 2016 before the learned District and Sessions Judge, Tiruvallur, in which, the fine amount was affirmed and the sentence alone was modified to six months. Aggrieved over the same, the petitioner filed the present Criminal Revision Cases.

2. The case of the complainant / respondent herein before the Courts below is that the complainant (respondent herein) filed complaints before the trial court alleging that there was a due of a sum of Rs.1,00,00,000/- by the petitioner towards land business, brokerage and other debts and in order to discharge such liability, the petitioner has executed a deed, acknowledging the liability, to the respondent and thus has issued four cheques, each for a sum of Rs.25,00,000/-. Out of the four cheques, two cheques were presented for encashment and the same were returned with an endorsement 'Funds Insufficient', on 21.05.2012. The respondent / complainant issued two notices, (both) dated 18.06.2012 and the same were received by the petitioner on 27.06.2012. However, the petitioner has neither sent any reply nor paid the cheque amount. Hence the respondent has filed complaints before the trial court.

3. The consistent case of the petitioner before the courts below is that the respondent claims Rs.1,00,00,000/- on account of three liabilities, viz., (i) in respect of liquidating the debt of the petitioner to one Mrs.Manjari for Rs.15,00,000/-, (ii) Hand loan of Rs.15,00,000/- and (iii) Land Brokerage due from the accused for Rs.66,00,000/-. The deed of acknowledgement (Ex.P-1) was obtained from the petitioner under coercion, threat and duress. Hence, the petitioner has not committed any offence under Section 138 of the Negotiable Instruments Act.

4. Before the trial court, the respondent has examined three witnesses, marked seven exhibits and the petitioner examined one witness and marked three exhibits. The trial court, after considering the materials on record, found the petitioner guilty under Section 138 of the Negotiable Instruments Act and sentenced, as aforesaid, which was challenged before the appellate court. The appellate court, though confirmed the conviction and fine amount, but modified the sentence alone to six months from nine months.

5. Heard both sides.

6. The learned counsel for the petitioner, in both the cases, submitted that the Courts below failed to appreciate the deed of acknowledgement and cheques, which were obtained from the petitioner by coercion and which have not been proved by examining the two attesting witnesses, who are the employees of the respondent; the non-examination of the attesting witnesses to Ex.P-1 is fatal to the case of the petitioner and had the attesting witnesses been examined, the claim of the petitioner would have come to light; the plea of the respondent was not substantiated by any documents and the evidence of P.Ws.1 to 3 are contradictory to each other. He also submitted that the petitioner herein is not liable to meet out the alleged debt, as projected by the respondent.

7. Per contra, the learned counsel for the respondent / complainant submitted that based on the materials, evidence and settled principles of law the Courts below have concurrently found the petitioner guilty under Section 138 of the Negotiable Instruments Act, convicted and sentenced him and hence there is no requirement for this Court to interfere with the same.

8. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

9. At the outset, it is to be noted that the interim suspension of sentence granted by this Court on 11.11.2016 till 25.11.2016 was not extended subsequently.

10. As far as the first contention of the learned counsel for the petitioner that the deed of execution and cheques were obtained from the petitioner by way of coercion is concerned, it has to be pointed out that to prove the said plea, no oral or documentary evidence was placed either before the Courts below or before this Court by the petitioner herein. Even D.W.1, who is said to be the petitioner's son, has not stated anything about the undue force and coercion used by the respondent for executing the said document. The circumstances, under which such undue force was used, were also not clearly made out through oral or documentary evidence by the petitioner. Also, if the plea of undue influence or coercion is true, at the very first instance itself the petitioner could have lodged a complaint before the Police Station or could have approached the Court of law, but no such step was taken by the petitioner. Hence, this Court is of the opinion that the plea of undue force is an invented theory of the petitioner to support his claim.

11. As far as the second contention of the learned counsel for the petitioner that the non-examination of the attesting

witnesses of Ex.P-1 is concerned, when the petitioner has not denied the signature and execution of Ex.P-1 except the plea that it was obtained by undue force, the non-examination of the attesting witnesses is not fatal to the case, as in a civil case. On the other hand, the respondent has proved the existence of legally enforceable debt by producing Exs.P-1-Deed of acknowledgement, P-2-Cheque bearing No.259005, dated 16.05.2012 and P-3-cheque bearing No.259006, dated 16.05.2012. To controvert such documents, no oral or documentary evidence was forthcoming on the side of the petitioner. Hence the said contention is liable to be rejected and is accordingly rejected.

12. As far as the other contention raised by the petitioner with regard to the contradictions in the evidence of P.Ws.1 to 3 is concerned, it is contradictory only with regard to the amount of money, but their evidence has made it clear that there was a transaction between the respondent, P.W.1, P.W.2, one Manjari, one Ram Prasath Builders and the petitioner herein. However, from their evidence, the issuance of the cheques to the respondent by the petitioner was substantiated.

13. Apart from the above, it is admitted by the petitioner that cheques were issued by him. It is trite law that the person, who issued or was responsible to issue the cheques, has to rebut the presumption placing necessary evidence, because when a cheque is issued towards payment of certain amount, it is presumed that there was existence of a legally enforceable debt. When the issuance of the cheques is admitted by the petitioner, the respondent is entitled to invoke presumption under Sections 118 and 139 of the Negotiable Instruments Act, for discharging the liability. In this case, rightly the respondent has invoked such presumption. The presumption will live, exist and survive and shall end only when the contrary is proved by the petitioner, i.e., the cheques were not issued for consideration and in discharge of any debt or liability. It is also to be borne in mind that a presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

14. Also, there is no iota of evidence or document on the side of the petitioner by way of reply to prove that there is no legally enforceable debt or liability due to the complainant. Hence, the petitioner has not rebutted the presumption as contemplated under Section 139 of the Negotiable Instruments Act.

15. Further it is settled proposition that the proceedings under Section 138 of the Negotiable Instruments Act is summary in nature; that the complainant is expected to prima facie show the existence of a debt and a commission of offence by the

accused; thereafter, the burden will shift on the accused to prove the contrary or to show the existence of probabilities in his favour. At that stage, the onus will shift back to the complainant to prove the debt beyond reasonable doubt. Only if the accused is able to establish at least the existence of probabilities in his favour, the burden will shift back to the complainant. In the case on hand, though the respondent has discharged the onus, the petitioner has not done so.

16. In view of the above reasonings, this Court is of the opinion that cogent and convincing reasonings have been recorded by the Courts below for convicting and sentencing the petitioner / accused and hence they are confirmed as such. These Criminal Revision Cases are devoid of merits and hence the same are dismissed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law. If any amount has been deposited by the accused either in the appellate court or in the Trial Court in connection with these cases, the same shall be disbursed with accrued interest to the complainant. It is always open to the parties to file an application before the Trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid, before the trial court, the learned Magistrate shall send a report to the Assistant Registrar (Crl. Side) of this Court, who shall make it form part of the records in this Case. Registry is directed to transmit the original records, if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To

1. The District and Sessions Judge,
   Tiruvallur.

2. The Judicial Magistrate,
   Fast Track Court Magisterial Level - II,
   Poonamallee.

Copy to

The Assistant Registrar (Crl Side),
High Court, Madras.

+2cc to M/s.K.Balasubramanian, Advocate Sr.16443 & 16444

Crl.R.C.Nos.1350 & 1351 of 2016

sai[co]
srg 02/06/2020