BAIL SLIP

The Appellant in Crl.Rc.No.310/2016 Accused namely S.Solomon, aged about 39 years, S/o.Somasundaram was directed to be released on bail as per order of this court dated 24.02.2016 in Crl.MP.2075/2016 in Crl.RC.310/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.310 of 2016

S.Solomon .. Petitioner

Vs

K.Thangaraj .. Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the conviction and sentence imposed on the petitioner in Crl.A.No.85 of 2015 dated 14.12.2015 on the file of the I Additional Sessions Judge, Erode, confirming the conviction and sentence imposed in S.T.C.No.273 of 2012 dated 03.07.2015 on the file of the Judicial Magistrate/FTC No.II, Erode.

For Petitioner : Mr.M.Vivekanandan
for M/s.P.Immamuelprakasam

For Respondent : Mr.K.Vasudevan

ORDER

The petitioner questioned the concurrent findings of conviction and sentence passed by the Courts below in this revision.

2. The allegation against the petitioner/accused is that he borrowed a sum of Rs.5,00,000/- from the respondent/complainant on 04.05.2009, and issued a post-dated cheque bearing No.776409, dated 16.06.2009 drawn on ICICI Bank, Coimbatore Branch, towards repayment. When the cheque was presented for collection on

16.06.2009, it was returned with an endorsement “Insufficient Funds”. It is also alleged that the statutory notice dated 24.06.2009 was served on the petitioner/accused on 26.06.2009 demanding the due, but he neither paid back the money nor sent any reply. Hence, the respondent/complainant has no other option except to file the private complaint, which culminated in S.T.C.No.1273 of 2012 before the trial Court, viz., Judicial Magistrate FTC No.II, Erode.

3.Before the trial Court, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.4 documents, while the revision petitioner/accused examined himself as D.W.4 besides examining D.Ws.1 to 3 and marking Exs.D.1 to D.4 documents.

4.Upon appreciation of the oral and documentary evidence adduced by the parties, the Trial Court convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.5,000/- as fine, in default, to undergo one month imprisonment, vide judgment dated 03.07.2015. The said judgment was challenged by the petitioner/accused by filing an appeal in Crl.A.No.85 of 2015. The appellate Court, viz., the I Additional Sessions Court, Erode, vide judgment dated 14.12.2015, dismissed the said appeal and thereby, confirmed the judgment of conviction and sentence passed by the trial Court. Both the judgments are sought to be challenged in this revision by the petitioner/accused.

5. Learned counsel for the petitioner submitted that the trial Court, without considering the materials placed by the petitioner / accused properly, fastened the liability on the petitioner and imposed the punishment, as stated above, and the appellate court, which has to appreciate the facts, also failed to discharge its duty and thus, both the judgments suffer from infirmities and inconsistencies warranting interference of this Court.

6. On the other hand, the learned counsel for the respondent/complainant submitted that the Trial Court considered all the materials and evidence and passed the impugned judgment and the findings of the trial Court have been rightly confirmed by the Appellate Court and hence, the judgments of the Courts below do not require any interference in the hands of this Court.

7. Heard the rival contentions and perused the materials available on record.

8. The petitioner / accused claimed that he did not know the respondent/complainant and he had money transaction with one

Kannan of Akil Finance, for which, he had given seven cheques as security, and repaid a portion of the borrowed money to the said finance and he never borrowed the amount, as claimed in the complaint. But due to certain disputes with the said finance company, one of the cheques was given to the complainant to foist a false case against him, for which, he had given complaint before the police authorities. However, the Trial Court has categorically held that though the petitioner / accused admitted his signature in the cheque, he failed to prove his defence that the same was issued for security, by examing the agent of the Akhil Finance by name Ashok Kumar. Further, the accused claimed that he had given police complaint for the misuse of the cheque, but he did not to pursue the same. Thus, he failed to discharge his burden of disproving the case of the complainant. Hence, the trial Court, after examining the evidence available on record and also considering the decided cases, concluded that the respondent/complainant proved the legally enforceable debt or liability, whereas the petitioner/accused failed to rebut the presumption under Section 139 of the Act and ultimately, convicted the petitioner/accused and sentenced him for the offence under Section 138 of the Act.

9.The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits.

10.This Court finds no reason much less valid reason to interfere with the concurrent findings so rendered by the Courts below. Further, it is settled law that while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence like a Court of appeal, unless it is shown that the findings on facts arrived at by the Courts below are on the face on it perverse.

11.In fine, this revision is dismissed being devoid of merits. The trial Court is directed to secure the petitioner/accused and commit him in prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be.



12.It is always open to the parties to file an application before the trial Court under Section 147 of the NI 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 Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in this criminal revision. The

Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

gg

To

1. The I Additional Sessions Judge,
   Erode.

2. The Judicial Magistrate FTC No.II,
   Erode.

Copy To

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

+1cc to Mr.M.Vivekanandam, Advocate, S.R.No. 13898
+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No. 13751

Crl.R.C.No.310 of 2016

LN(CO)
GN(06/08/2020)