

Bail Slip

The Petitioner/Accused namely S.Sivakumar was enlarged on bail in Crl.MP.No.4756 of 2016 in Crl.RC.No.669 of 2016 vide this Court order dated 22/04/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.No.669 of 2016

S.Sivakumar ... Petitioner
Vs.
K.Muruganandham ... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment of conviction and sentence imposed in the judgment dated 11.10.2014 made in C.A.No.287 of 2012 on the file of the Principal Sessions Judge, Coimbatore, confirming the conviction and sentence imposed in the judgment dated 13.09.2012 made in C.C.No.160 of 2011 on the file of the Judicial Magistrate / Fast Track at Magistrate Level-II, Coimbatore.

For Petitioner : Mr.S.Vinoth Kumar

ORDER

The petitioner herein is the accused and the respondent herein is the complainant. On a complaint given by the complainant against the petitioner before the Trial Court under Section 138 of the Negotiable Instruments Act, the same was taken on file and the accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly he was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.4,000/- in default to undergo further simple imprisonment for a period of two months. Challenging the same, the petitioner preferred an appeal before the Principal Sessions Judge, Coimbatore, which ended in dismissal, against which the present Criminal Revision Case has been filed.

2.The learned counsel for the petitioner has submitted that the Courts below have failed to note that absolutely there is no evidence on record to prove the transaction between the parties. It is submitted that the Courts below have failed to note that existence of legally recoverable debt is not a matter of presumption under Section 139 of the Negotiable Instruments Act as it merely raise a presumption in favour of the holder of the cheque that the same has been issued for discharge of the debt or other liability. It is also submitted that the burden of proof is always upon the complainant and there is no need for the accused to let in evidence to prove otherwise. Stating so, the learned counsel prayed for setting aside the impugned judgments.

3.This Criminal Revision Case was admitted on 12.04.2016. It is seen that no steps have been taken by the learned counsel for the petitioner to serve papers to the other side even at this length of time. Since no order prejudicial to the interest of the respondent is going to be passed, this Court is inclined to dispose of this revision.

4.Heard the learned counsel for the petitioner and perused the materials available on record carefully and meticulously.

5.After a threadbare analysis of the materials on record, the Trial Court has observed that though the initial burden is on the complainant to prove the case beyond reasonable doubt, the admission on the part of the accused that the cheque and signature in it belongs to him, impliedly or explicitly, immediately raises a presumption in favour of the complainant under Section 139 of the Negotiable Instruments Act. The Trial Court has also observed that there is no material on record to accept the contention raised on the side of the accused that the complainant and the business partner of the accused have misused the cheque and filed false case. The Trial Court has further observed that if really the contention of the accused that the complainant has taken the cheque stealthily from the office of the accused is true, the accused would have taken immediate legal steps against the complainant, but he had not done so and in the circumstances, the presumption in favour of the complainant stands and the accordingly the accused is found guilty of the offence under Section 138 of the Negotiable Instruments Act. The Trial Court has considered the materials and evidence in a proper perspective and has rendered the above factual findings. The Lower Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the Trial Court on merits. This Court is not inclined to

interfere with the said factual concurrent findings rendered by the Courts below.

6. In the result, the Criminal Revision Case is dismissed being devoid of merits. The Trial Court is directed to secure the 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. 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 Magistrate shall send a report to the Assistant Registrar (Crl.Side) of this Court, who shall make it form part of the records in Crl.R.C.No.669 of 2016. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track at Magistrate Level-II, Coimbatore.
2. The Principal Sessions Judge,
Coimbatore.
3. The Public Prosecutor,
Madras High Court.

Copy to : 1. The Assistant Registrar (Crl.Side),
High Court of Madras, Chennai -104.

2. The Section Officer, Criminal Section,
High Court of Madras, Chennai -104.

+1cc to Mr.S.Vinoth Kumar, Advocate Sr.No.13676

AKM/12.03.2020 /3P-7C/

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