

Bail Slip

The Appellant/Accused, namely Sasikala W/o. Subramani Accused was directed to be released on bail as per order dated 28.04.2016 in MP.NO.1/09 IN CRL MP.NO.5000/2016 IN Crl.R.C.No.698 of 2016 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.No.698 of 2016

Sasikala ... Petitioner/ Appellant/ Accused

Vs.

S.Velmurugan ... Respondent/ Respondent/Complainant

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment passed against the petitioner / appellant in C.A.No.112 of 2015 on the file of the learned V Additional District and Sessions Judge, Coimbatore, by judgment dated 27.11.2015 confirming the judgment passed by the learned Judicial Magistrate, Fast Track Court No.1, Coimbatore in C.C.No.284 of 2013 dated 24.04.2015.

For Petitioner : Mr.G.Murugeshkumar

ORDER

The petitioner herein is the accused and the respondent herein is the complainant. On a private complaint given by the complainant against the petitioner under Section 138 of the Negotiable Instruments Act, the same was taken on file as C.C.No.284 of 2013 on the file of the Judicial Magistrate, Fast Track Court No.1, Magisterial Level, Coimbatore and the accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly she was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year. A sum of Rs.3,25,000/- has also been ordered to be paid by the petitioner to the complainant as compensation, within 2 months, failing which she has to undergo simple imprisonment

for three months. Challenging the same, the petitioner has preferred an appeal before the V Additional District and 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 neither the Trial Court nor the Lower Appellate Court has considered the defence taken by the petitioner in the cross examination that there was no transaction between the petitioner and the complainant. It is submitted that the complainant has not proved his source of income and financial transaction between him and the accused in respect of the cheque amount. It is further submitted that the case of the complainant that he had lent a huge amount of Rs.3,25,000/- to the accused without getting any original documents for security purpose, is highly doubtful. It is finally submitted that the petitioner is not having any legal liability to the complainant for the cheque amount and that the alleged cheque has been taken by the complainant illegally from the house of the accused along with some other documents.

3.This revision has been admitted by this Court on 28.04.2016 and thereafter the matter has been adjourned periodically at request. 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 papers.

5.In respect of the issue as to whether the complainant has established the factual ingredients for raising the mandatory statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act in his favour, the Trial Court, taking note of the principle enunciated by the Hon'ble Supreme Court in Bharat Barrel's case reported in 1991 CTC 497, that presumption under Section 118 of the Negotiable Instruments Act will apply once the execution of the promissory note is accepted by the defendant, and also the evidence of P.W.1-complainant in the present case which established that the accused executed Ex.P1-Cheque in favour of the complainant and the further fact that the said evidence of P.W.1 has not been shattered by the accused in the cross examination, nor there is presence of any contra evidence in this connection, the Trial Court came to the conclusion that the accused signed Ex.P1-Cheque and issued the same to the complainant and that the evidence of P.W.1 clearly established the due execution of Ex.P2-Return memo and accordingly statutory presumption under Section 118 of the Negotiable Instruments Act has been titled in favour of the complainant. With regard to the other issues

raised by the accused, the Trial Court, on a threadbare analysis of the materials and evidence, came to the conclusion that there was no convincing evidence on the side of the accused to prove the same. Even with regard to the contention put forth on the side of the accused that the complainant has no source of income to lent such a huge amount, the Trial Court has observed that nothing has been put forth on the side of the accused to establish the same and accordingly rejected the said plea of the petitioner/accused. 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 her 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.698 of 2016. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

KM

To

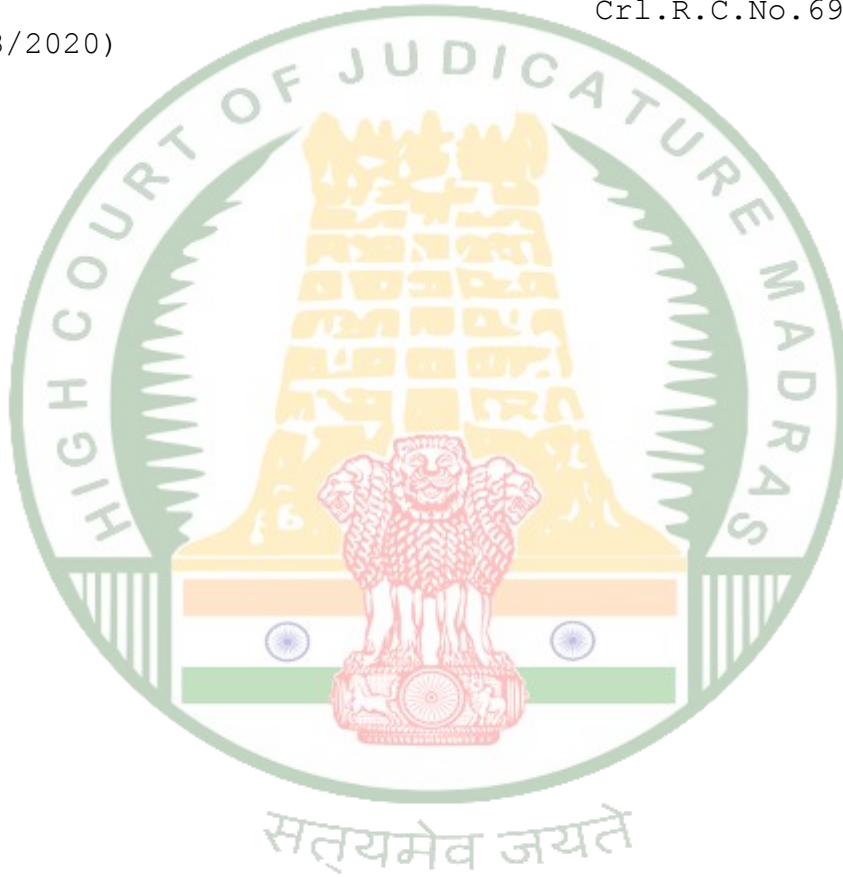
1. The V Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate, Fast Track Court No.1,
Coimbatore.
3. Do thro the Chief Judicial Magistrate, Coimbatore
4. The Public Prosecutor,
Magistrate's Court.

5.The Assistant Registrar,
Criminal Section,High Court,Madras

6. The Section Officer,
Criminal Section,
High Court,Madras

Crl.R.C.No.698 of 2016

A.SK(09/03/2020)



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