

Bail Slip

The Accused Viz., A. Chinnaraj, S/o. Antony Joseph, was enlarged on bail as per order in Crl. M.P.5503 of 2016 in Crl. R.C.734/2016, dated 12/05/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.734 of 2016

A.Chinnaraj

..Petitioner/Accused

Vs

P.Thulasiammal

..Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, against the judgment dated 11.02.2016 passed by the learned III Additional District and Sessions Judge, Coimbatore in Crl.A.No.73 of 2015 confirming the judgment dated 09.03.2015 passed by the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore in CC No.64 of 2014.

For Petitioner : Mr.A.Tamilarasan

For Respondent : Mr.N.Ponraj

ORDER

The petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act and the same was taken on file as CC No.64 of 2014 by the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore. After contest, the trial Court, by judgment dated 09.03.2015, found the petitioner guilty of the said offence and convicted and sentenced him to undergo ten months simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one month. Challenging the same, he preferred an appeal in Crl.A.No.73 of 2015 before the learned III Additional District and Sessions Judge, Coimbatore. By judgment dated 11.02.2016, the Appellate Court confirmed the conviction passed by the trial Court, but modified the sentence by imposing a fine of Rs.3,10,000/-, in default to undergo simple imprisonment for six

months. Out of the said fine amount, Rs.3,00,000/- shall be paid to the respondent/complainant as compensation under Section 357(3) Cr.P.C after the appeal time and the balance of Rs.10,000/- shall be paid to the credit of the State. Feeling aggrieved, the petitioner/accused has preferred this Criminal Revision Case.

2. The learned counsel for the petitioner contended that the Courts below have failed to note that the xerox copy of the promissory note has been marked as Ex.P1, when the respondent/complainant has stated in her cross examination that she did not know the attested witness of Ex.P1 and the original promissory note was in her custody for filing a recovery suit; the Court below has also failed to note that the respondent/complainant was not having sufficient amount to advance a sum of Rs.3,00,000/- as loan to the petitioner/accused and when the petitioner/accused has raised a specific question during the cross examination of the respondent/complainant, she has stated that the amount was handed over to the petitioner/accused through her husband, but she did not examine her husband to prove the same. Thus, according to the learned counsel, there is no legally enforceable debt against the petitioner/accused and hence, he should be acquitted from the charge levelled against him. Contending so, the learned counsel sought to set aside the judgments impugned herein.

3. Per contra, the learned counsel for the respondent contended that trial Court has considered the materials and evidence in proper perspective and has passed the impugned judgment and the same has been correctly confirmed by the Appellate Court and hence, the judgments of the Courts below do not require any interference in the hands of this Court.

4. Heard the rival submissions and perused the records.

5. The private complaint instituted by the respondent/complainant proceeds as if the petitioner/accused borrowed a sum of Rs.3,00,000/- from the respondent/complainant on 10.10.2012 for his urgent family requirements by executing a promissory note for the said sum, agreeing to repay the same with interest at the rate of 18%pa. Upon the repeated demands made by the respondent/complainant, the petitioner/accused issued a cheque bearing No.364965 dated 29.01.2013 drawn on UCO Bank, Coimbatore for a sum of Rs.3,00,000/-. When the said cheque was presented for collection, it was returned dishonoured due to insufficient funds in the bank account of the petitioner/accused. The respondent/complainant issued a legal notice dated 15.02.2013 and the same was returned on 28.02.2013 with an endorsement "not claimed". Hence, the respondent/complainant filed the private complaint, which culminated in CC No.64 of 2014 before the trial

Court. To prove his case, the respondent/complainant examined herself as PW.1. Her proof affidavit is in consonance with the written complaint. She also marked Ex.P1-copy of promissory note, Ex.P2-cheque, Ex.P3 cheque return memo, Ex.P4 legal notice sent by her to the petitioner/accused and Ex.P5-returned cover.

6. According to the petitioner/accused, he borrowed a loan from one Devaraj and at that time, he executed the alleged promissory note and cheque for security purpose; subsequently, he discharged the said loan and he demanded the said documents; but the said Devaraj failed to return those documents to the petitioner/accused and he misused the same through the respondent/complainant. Further, he raised a defence that the respondent is not having sufficient means to advance a sum of Rs.3,00,000/- and the cheque in question was not issued towards any legally existing and enforceable debt.

7. However, the petitioner/accused has not denied the signature found in the cheque in question and has also failed to state as to how the same came to the hands of the respondent/complainant. Therefore, the presumption under Section 139 of the Negotiable Instruments Act is drawn in favour of the complainant. To dislodge the presumption that the cheque in question was issued in discharge of the legally existing debt/liability, the petitioner/accused has not adduced any evidence either in oral or documentary. Further, he has not sent any reply notice denying the allegations raised in the complaint. That apart, nothing elicited in the cross examination of the respondent/P.W.1. On the other hand, the respondent/complainant has substantiated his case by concrete materials and proved beyond reasonable doubt that the cheque was issued for the existing legally enforceable debt against the petitioner / accused. Therefore, the trial Court has correctly found the petitioner/accused guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted him for the same.

8. After a threadbare analysis of the materials available on record, the Appellate Court has also rightly confirmed the same. Hence, this Court is not inclined to interfere with the judgments of the Courts below.

9. 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 her 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 from part of the records in this Criminal Revision. Registry is directed to transmit the original records if any, the the respective Courts forthwith.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
 - 2.The Judicial Magistrate,
Fast Track Court at Magistrate Level-II,
Coimbatore.
 - 3.The Judicial Magistrate No.V, Coimbatore.
 - 4.The Chief Judicial Magistrate, Coimbatore.
 5. The Assistant Registrar (Crl.Side), High Court, Madras.
- + 1 CC to Mr.A. Tamilarasan, Advocate SR.NO.12139
+ 1 CC to Mr.N. Ponraj, Advocate SR.NO.11838

Cr1.R.C.No.734 of 2016

NRJK(CO)
EU 23.06.2020

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