



BAIL SLIP

The Petitioner herein/Accused namely S.Sankar, S/o.R.S.Srinivasan, aged about 64 years was directed to be released on bail as per order of this Hon'ble Court dated 12.05.2016 made in Crl.MP.No.5567 of 2016 in Crl.R.C.No.741 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.741 of 2016

S.Sankar

... Petitioner/Accused

Vs.

E.Rani

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code against the judgment dated 25.04.2016 made in Crl.A.No.215 of 2013 on the file of the learned XIX Additional Sessions Judge, City Civil Court, Chennai-1, confirming the Judgment dated 19.09.2013 made in C.C.No.8699 of 2010 on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai.

For Petitioner : Mr.T.Munirathnam Naidu
For Respondent : Mr.P.Rajkumar Pandian

O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. Based on the private complaint given by the respondent, the petitioner faced trial for the offence under Section 138 of the Negotiable Instruments Act in CC.No.8699 of 2010 on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai. By judgment dated 19.09.2013, the trial Court found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly convicted him for the same and sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs.2,00,000/- to the complainant, in default to undergo simple imprisonment for a further period of two months. Challenging the same, the petitioner preferred an appeal in Crl.A.No.215 of 2013 before the learned XIX Additional



Sessions Judge, City Civil Court, Chennai, which ended in dismissal. Aggrieved over the same, the petitioner has filed this Criminal Revision Case.

2.The learned counsel for the petitioner has submitted that the trial Court failed to note that Exs.P1 and P2 are fabricated documents and there are corrections and interpolations in the same and there is no transaction between the petitioner and the respondent. He further submitted that the subject cheque was forcibly obtained from the petitioner in the police station, while lodging a complaint and there was no legally enforceable debt against the petitioner. It is also submitted that the respondent has no sufficient means to pay Rs.2,00,000/- to the petitioner and she did not file any document to prove her capacity to pay the said amount. Stating so, the learned counsel prayed for allowing this revision by setting aside the judgments impugned herein.

3.The learned counsel for the respondent has submitted that the trial Court has correctly considered the materials and evidence and has 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.

4.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

5.According to the respondent/complainant, the petitioner had approached the respondent through a broker in the month of August 2008 and stated that he is an absolute owner of the property situated at Kancheepuram District, Sriperumbudur Taluk, Iyappan Thangal, Balaji Avenue, bearing S.Nos.104/2 and 175/3B part, measuring to an extent of 2400 sq.ft and expressed his willingness to sell the said property worth about Rs.32,00,000/- through a sale consideration and received an advance amount of Rs.2,10,000/- as cash and Rs.2,00,000/- vide HDFC Bank Cheque bearing No.398290. Subsequently, the respondent came to know through a legal opinion that the said property was not free from encumbrance and hence, requested the petitioner to return back the said amount. On such demand, the petitioner issued a cheque dated 24.01.2009 for a sum of Rs.2,00,000/- drawn on Kotak Mahindra Bank, Adyar Branch to the respondent. When it was presented for collection, it was returned dishonoured with an endorsement "payment stopped by the drawer". Since the petitioner failed to repay the cheque amount, the respondent filed the present complaint against him for the offence under Section 138 of the Negotiable Instruments Act. To prove her case, PW1 and P.W.2 were examined and Exs.P1 to P7 documents were marked.



6. According to the petitioner/accused, there was no transaction with the respondent; as per Ex.P5 letter written by the petitioner to the respondent, P.W.2/husband of the respondent should get the amount by depositing the cheque in the bank account; and P.W.2 deposed that the petitioner gave the cheque on 26.09.2008, but he later deposed that the cheque was given on 11.12.2008 and therefore, it is clear that the petitioner has not issued the cheque; there was a correction in Ex.P1; as per Ex.D2, there was a transaction only between the respondent's son and the petitioner; and hence, the petitioner is not liable to pay any amount to the respondent and there is no legally enforceable debt. To substantiate the same, he marked Exs.D1 and D2 documents.

7. It is seen from the evidence and materials adduced by the parties that the respondent discharged the initial burden as per the provisions of the Negotiable Instruments Act and the petitioner has not disputed the issuance of the cheque in question and the signature found thereon. As such, the presumption under section 139 of the Negotiable Instruments Act is drawn in favour of the respondent that the cheque in question was issued by the petitioner to the respondent in discharge of the legally enforceable liability. In such circumstances, the petitioner has to rebut the same by probable defence. But he failed to adduce any evidence, contrary to the case of the respondent. Further, there is no proof with regard to the contention raised by the petitioner that he issued the cheque in question by the pressure of the police. That apart, the petitioner refused to receive the legal notice issued by the respondent and Ex.P7 is the returned postal cover. Though the petitioner contended that no notice was served on him, he failed to prove the same, by examining any official from the postal department. Thus, the trial Court has observed that the petitioner failed to rebut the presumption drawn in favour of the respondent, whereas the respondent proved her case that the cheque in question was issued to her by the petitioner for the legally enforceable liability. After observing so, the trial Court has convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The Appellate Court has also dealt with the case properly and has rightly 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.

8. In the result, the Criminal Revision Case stands 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 form part of the records in this Criminal Revision. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai (For Information)
2. The XIX Additional Sessions Judge,.
XIX Additional Sessions Court,
City Civil Court, Chennai.
3. The Metropolitan Magistrate
Fast Track Court No.III
Saidapet, Chennai-15.

Copy To

1. The Assistant Registrar (Crl.Side)
High Court, Madras.
2. The Section Officer (Crl.Side) Records,
High Court, Madras.
3. The Deputy Registrar, (Crl.Side)
High Court, Madras-104.

+1cc to Mr.P.Rajkumar Pandian, Advocate, S.R.No.13158

Crl.R.C.No.741 of 2016

NRJK(CO)
CS/08/07/2020