Bail Slip

K. Manoharan, S/o.Kolandaivelu, (the petitioner herein) was released on bail by order of this Court dated 05/02/2014 in M.P.No.10/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl RC.No.142 of 2014

K. Manoharan ...Petitioner/Appellant/Accused

Vs.

Central Bank of India
Rep. by its Branch Manager
Erode. ...Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 read with Section 401 of the Criminal Procedure Code praying to set aside the order in C.A.No.29/2013 passed by the Hon'ble Principal District Sessions Judge, Erode, dated 09.10.2013 confirming the judgment of the Judicial Magistrate, Fast Tract Court No.1 (Magisterial Level), Erode in S.T.C.No.235/2012 dated 01.04.2013.

For Petitioner : Mr. A.Thiagarajan
For Respondent : No appearance.

ORDER

The Revision petitioner has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act by judgment dated 01.04.2013 in STC No. 235 of 2012 on the file of the Judicial Magistrate, Fast Track Court (Magistterial Level-I), Erode, and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for 30 days. Challenging the same, the revision petitioner/accused preferred the Criminal Appeal No.29 of 2013 on the file of the Principal Sessions Court, Erode and the appellate court dismissed the appeal by confirming the conviction and sentence imposed on him by the trial court. Challenging the same , this Criminal Revision has been preferred by the accused.

2. Briefly stated, according to the case of the complainant bank, the accused borrowed a loan and agreed to repay the same with interest and subsequently issued the cheque, marked as Ex.P1, dated 17.03.2009 for a sum of Rs.73,000/- drawn on UTI Bank, Erode, and when the abovesaid cheque was presented for collection by the complainant bank through their bank on 17.03.2009, the abovesaid cheque was dishonoured for the reason "insufficient funds" under Ex.P2. Following the same, the complainant issued the legal notice Ex.P3 dated 26.03.2009 to pay the amount. Despite receipt of the same by the accused, the acknowledgment card being marked as Ex.P4, the accused did not pay the amount. Consequently, a complaint had been lodged by the complainant against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

3. It is mainly put forth by the accused that at the time of obtainment of the loan, he had given various cheque leaves along with other documents to the bank and therefore, according to him, Ex.P1 is one of the cheques given by him at the time of borrowing the loan and not given subsequently towards the discharge of the loan secured by him as put forth by the bank and thereby disputed his liability to pay the amount as claimed by the respondent bank.

4. As above pointed out, the defence version had not been upheld by the courts below and consequently, the courts below had convicted and sentenced the accused as aforestated.

5. It is contended by the accused that the complaint itself is not maintainable on the footing that the statutory notice was issued by the Senior Manager, the complaint was presented by another manager and the evidence had been adduced by the Assistant Manager of the complainant bank. However, as rightly held by the appellate court, when the complainant is the bank and accordingly, when the bank is being represented by various managers at the relevant point of time, in such view of the matter, merely because the complaint had been filed and the evidence had been tendered and the statutory notice had been issued by the various managers of the bank, the same would not, in any manner, affect the validity of the complaint lodged by the complainant bank and in view of the fact that the affairs of the complainant bank had been dealt with by various managers at different points of time, accordingly, it is seen that the statutory notice, the complaint and the evidence had been put forth by the various managers of the complainant bank, and therefore, the abovesaid argument put forth by the accused for rejecting the complainant's case, has been rightly rejected by the appellate court.

6. It is further put forth that clear particulars of the amount had not been stated in the statutory notice dated 26.03.2009 and therefore, the statutory notice is not in

conformity with loan and further it is put forth that the loan borrowed is time barred. From the materials placed on record, it is found that the accused had secured the term loan of Rs.70,000/- from the complainant bank and executed necessary documents promising to repay the same with interest. However, despite several demands, the accused had failed to repay the amount. Therefore, in such view of the matter, when according to the complainant bank, subsequently, the accused had chosen to issue the cheque in question towards discharge of the loan amount and though the loan secured by the accused is only Rs.70,000/- when the accused had assured to repay the amount with interest, in such view of the matter, the cheque in question issued for Rs.73,000/-, would not, in any manner, undermine the prosecution case on the premise that the correct figure of the loan secured had not been reflected in the cheque in question. Further when the accused had agreed to pay the amount in instalments and therefore, having failed to pay the loan in instalments, in such view of the matter, the limitation period would start from the last EMI and therefore, the contention of the accused that the loan is time barred and therefore, the same cannot be enforced by way of Ex.P1 cheque, as such, cannot be countenanced and rightly rejected by the courts below.

7. As above pointed out, following the dishonour of the cheque issued by the accused, the bank had sent the statutory notice and the same had been acknowledged by the accused. Despite the abovesaid position, the accused had not chosen to send any reply disputing his liability. Therefore, the statutory presumption would be available in favour of the bank and the accused having not discharged the same by adducing acceptable and reliable evidence, the courts below had rightly disbelieved the defence version projected by the accused.

8. Further, as rightly held by the appellate court, even assuming for the sake of arguments that the accused had entrusted the blank cheque in question at the time of availment of loan, when the holder of the cheque, the complainant bank, is entitled to fill the same and till the date is written on the cheque, the instrument being only the bill of exchange, in such view of the matter, as rightly held, the cheque in question could be enforced within 6 months from the date as written on the cheque and therefore, the contention of the accused that the complainant bank had misused the cheque issued by him at the time of availment of the loan cannot be accepted in any manner.

9. In the light of the abovesaid factors, the courts below had properly analysed the materials placed on record in the proper perspective and accordingly convicted and sentenced the accused for the offence punishable under Section 138 of Negotiable Instruments Act. I do not find any valid reason to interfere with the abovesaid determination of the courts below.

10. In conclusion, the Criminal Revision fails and is accordingly dismissed. If the accused had not complied with the sentence, the Trial Court is directed to secure the presence of the accused to undergo the sentence of imprisonment imposed on him as per law.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

bga

Copy to

1. The Principal District Sessions Judge, Erode,

2. The Judicial Magistrate, Fast Tract Court No.1 (Magisterial Level),
Erode.

3. The Section officer, V.R. Section, High Court, Madras

+1cc to Mr.TM.Hariharan, Advocate SR.No.23567

Crl RC.No.142 of 2014

VSN II(CO)
GMY(02/07/2020)