

BAIL SLIP

The Appellant/Petitioner/Accused namely S.Manickam, S/o.Sinnaraman, was directed to be released on bail as per order of this Court dated 06.04.2017 in CrI.M.P.No. 4729 in CrI.R.C.534 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CrI.R.C.No.534 of 2017

S.Manickam ... Petitioner

Vs

T.Senthil Kumar ... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to call for the records in CrI.A.No.12 of 2015 on the file of the V Additional District and Sessions Judge, Coimbatore, dated 26.11.2015 confirming the order of conviction of the learned Judicial Magistrate No.II, Pollachi, in S.T.C.No.1718 of 2013 dated 15.12.2014 and set aside the same.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.P.Kalimuthu

सत्यमेव जयते
ORDER

The petitioner questioned the concurrent findings of conviction and sentence passed by the Courts below in this revision.

2. The allegation against the petitioner/accused is that he borrowed a sum of Rs.2,50,000/- from the respondent/complainant on 01.06.2013, and issued a post-dated cheque bearing No.029474, dated 01.07.2013 drawn on Canara Bank, Somandurai Branch, towards repayment. When the cheque was presented for collection on 01.07.2013, it was returned with an endorsement "Exceeds arrangement". It is also alleged that the statutory notice dated 16.07.2013 was served on the petitioner/accused on 17.07.2013 demanding the due, but he neither paid back the money nor sent

any reply. Hence, the respondent/complainant has no other option except to file the private complaint, which culminated in S.T.C.No.1718 of 2013 before the trial Court, viz., Judicial Magistrate No.II, Pollachi.

3.Before the trial Court, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.4 documents, while the revision petitioner / accused examined himself as D.W.1 and marked Ex.D.1.

4.Upon detailed appreciation of the oral and documentary evidence adduced by the parties, the Trial Court convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo six months simple imprisonment and to pay a sum of Rs.2,50,000/- as compensation to the complainant, in default, to undergo six months simple imprisonment, vide judgment dated 15.12.2014. The said judgment was challenged by the petitioner/accused by filing an appeal in CrI.A.No.12 of 2015. The appellate Court, viz., the V Additional District and Sessions Court, Coimbatore, vide judgment dated 26.11.2015, dismissed the said appeal and thereby, confirmed the judgment of conviction and sentence passed by the trial Court. Both the judgments are sought to be challenged in this revision by the petitioner/accused.

5. Learned counsel for the petitioner submitted that the petitioner only borrowed a sum of Rs.1,00,000/- on 04.04.2009, for which he had given four cheques as security, and repaid a sum of Rs.1,67,000/-, which includes interest and he never borrowed the amount, as claimed in the complaint. However, the trial Court wrongly fastened the liability on the petitioner and the defence raised by the petitioner/accused was not at all appreciated by the trial Court in accordance with law and the appellate court, which has to appreciate the facts, also failed to discharge its duty and thus, both the judgments suffer from infirmities and inconsistencies warranting interference of this Court.

6. On the other hand, the learned counsel for the respondent/complainant submitted that the Trial Court considered all the materials and evidence and 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.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The Trial Court has categorically held that the petitioner / accused admitted his signature and thus, the issuance of the cheque and hence, it is for him to disprove the

case of the complainant rebutting the same. However, he failed to discharge his burden of disproving the case of the complainant. Thus, the trial Court, keeping in mind the evidence available on record and also considering the decided cases, concluded that the respondent/complainant proved the legally enforceable debt or liability, whereas the petitioner/accused failed to rebut the presumption under Section 139 of the Act and ultimately, convicted the petitioner/accused and sentenced him for the offence under Section 138 of the Act.

9.The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits.

10.This Court finds no reason much less valid reason to interfere with the concurrent findings so rendered by the Courts below. Further, it is settled law that while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence like a Court of appeal, unless it is shown that the findings on facts arrived at by the Courts below are on the face on it perverse.

11.In fine, this revision is dismissed being devoid of merits. The trial Court is directed to secure the petitioner/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.

12. It is always open to the parties to file an application before the trial Court under Section 147 of the NI 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), who shall make it form part of the records in this criminal revision. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (Writ)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Pollachi.

2.The Chief Judicial Magistrate No.II,
Pollachi.

3.The V Additional District and Sessions Judge,
Coimbatore.

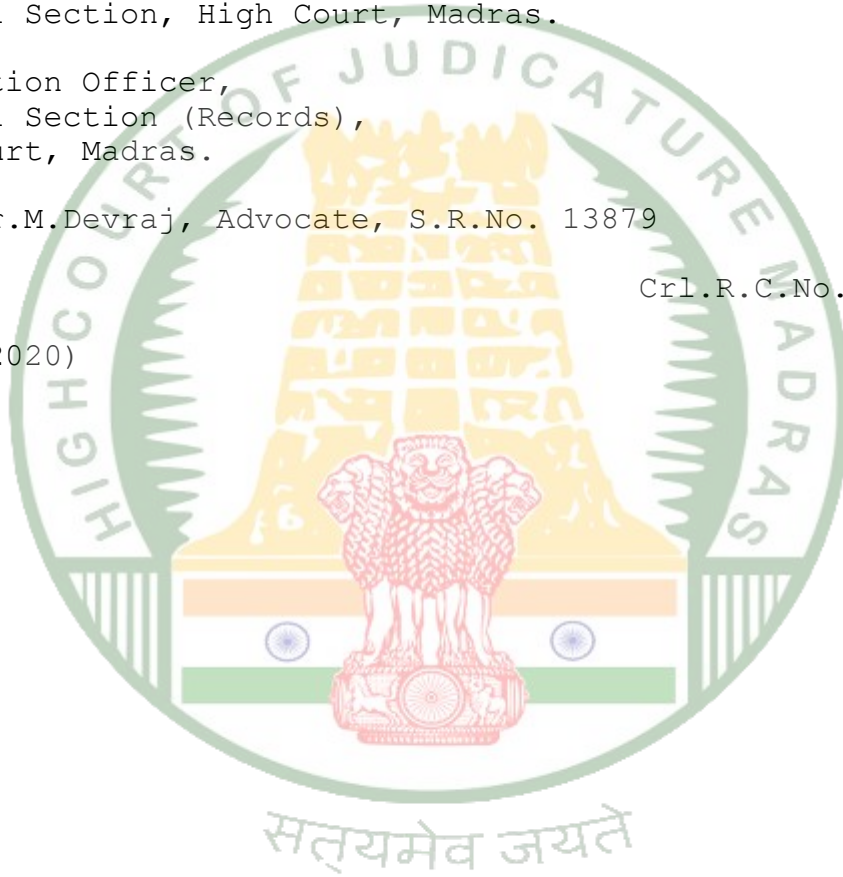
4.The Assistant Registrar,
Criminal Section, High Court, Madras.

5.The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.M.Devraj, Advocate, S.R.No. 13879

Cr1.R.C.No.534 of 2017

RLD(CO)
GN(06/08/2020)



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