



BAIL SLIP

The Petitioner/Accused namely Lakshmanan, S/o.Kannan was directed to be released on bail as per order of this Court dated 11.04.2017 in Crl.MP.No. 5062 of 2017 in Crl.RC.No. 568 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.No.568 of 2017

Lakshmanan ... Petitioner/Accused
Vs.

Elangovan ... Respondent/Complainant

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order dated 22.05.2015 in S.T.C.No.328 of 2013 on the file of Judicial Magistrate - I, Tiruppur and the same was Partly allowed by the III Additional Sessions Judge, Vellore @ Tirupattur in Crl.A.No.16/2015, dated 22.01.2016.

For Petitioner : M/s.K.Sathiya

For Respondent : Mr.E.Kannadasan

O R D E R

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 S.T.C.No.328/2013 on the file of the Judicial Magistrate No.1, Tirupattur. After contest, the trial Court by judgment dated 22.05.2015, has found the petitioner guilty for the aforesaid offence and convicted and sentenced him to undergo six months simple imprisonment and to pay a compensation of Rs.7,00,000/- to the complainant in default to undergo further period of three months simple imprisonment. Challenging the same, the petitioner has preferred an appeal in Crl.A.No.16 of 2015 before the learned III Additional Sessions Judge, Vellore at Tirupattur.



The Appellate Court vide judgment dated 22.01.2016, partly allowed the appeal by confirming the conviction and payment of compensation and modifying the sentence from six to four months simple imprisonment. Aggrieved over the same, the petitioner has instituted this Criminal Revision Case.

2. The learned counsel for the petitioner has submitted that the Courts below failed to appreciate that the petitioner had not committed the offence under Section 138 of the Negotiable Instruments Act and that the complainant had failed to establish a legally enforceable debt in respect of the amount covered by the cheque in question to the tune of Rs.7,00,000/-. It is also submitted that the trial Court failed to note the contradictory versions of the witnesses adduced on the side of the respondent.

3. The learned counsel for the respondent has submitted that the Courts below have considered the materials and evidence in proper perspective and have passed the impugned judgments and hence the same do not require any interference in the hands of this Court.

4. Heard the learned Counsel on either side and perused the papers.

5. Before advertng to the rival submissions, it may be necessary to state here that while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldeep Singh Anand and Others, etc. [(2004) 7 SCC 659.]

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court?". It is for the above



purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

6. The allegation levelled against the petitioner in the complaint is that he borrowed a sum of Rs.6,65,000/- from the respondent agreeing to repay the same on demand, but he failed to repay the same; after repeated demands, he issued a cheque dated 19.04.2013 bearing No.698241 for the said sum of Rs.6,65,000/- to the respondent; when it was presented for collection on 19.04.2013, the same was returned dishonoured with an endorsement "insufficient funds"; the respondent issued a legal notice dated 25.04.2013 to the petitioner; though the petitioner received the legal notice on 06.05.2013, neither repaid the cheque amount nor sent reply to the same; and hence, the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

7. Denying the allegations so made by the respondent, the petitioner has taken a defence that he issued the cheque in question for some other loan transaction, but he failed to prove the same by adducing either oral or documentary evidence. He not even sent any reply to the legal notice received from the respondent. Though the petitioner cross examined the respondent



through his counsel, nothing was elicited from the same. On the other hand, it would establish the factum of receipt of notice by the petitioner and the issuance of cheque in question by the petitioner and the signature found therein. That apart, the petitioner has not sent any reply to the legal notice. In such circumstances, the presumption drawn under Sections 118 and 139 of the Act lies in favour of the complainant. The accused failed to rebut the same by preponderance of probabilities. Hence, the trial Court has rightly held that the respondent proved the case against the petitioner for the offence as stated supra beyond reasonable doubt. The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits. Therefore, this Court is not inclined to interfere with the said factual concurrent findings rendered by the Courts below.

8. In fine, this Criminal Revision case fails and is dismissed accordingly. 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 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 this Criminal Revision Case. Registry is directed to transmit the original records if any, to the the respective Courts forthwith.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional Sessions Court,
Vellore, Tirupattur.
2. The Judicial Magistrate - I,
Tirupattur.



3. The Public Prosecutor,
Madras High Court.

Copy To

The Assistant Registrar(Crl.Side),
High Court, Madras 600 104.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No. 11349

Cr1.R.C.No.568 of 2017

JP (CO)

GN(01/07/2020)