

BAIL SLIP

The Petitioner/Accused, M/s.S.Rajalakshmi, W/o.Selvam, was directed to be released on bail as per order of this Court dated 18/04/2017 made in Crl.M.P.No. 5435/2017 in Crl.RC.605/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.605 of 2017
and
Crl.MP.Nos.5435 and 13008 of 2017

S.Rajalakshmi .. Petitioner/Accused

Vs.

Selvaraj .. Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order dated 09.01.2017 passed by the learned District and Sessions Judge, Thiruvarur in Crl.A.No.17 of 2016 confirming the judgment dated 14.10.2016 passed in S.T.C.No.16 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court at Magistrate Level, Thiruthuraipoondi.

For Petitioner : Mr.S.Arivazhagan
For Respondent : Mr.Vimal B.Crimson

O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. On a private complaint given by the respondent, the petitioner faced trial for the offence punishable under Section 138 of the Negotiable Instruments Act. By judgment dated 14.10.2016, the trial Court found the petitioner guilty of the said offence and accordingly convicted and sentenced her to undergo simple imprisonment for two months and to pay a compensation of Rs.6 Lakhs to the complainant within a period of 2 months, in default to undergo simple imprisonment for a further period of one month. Challenging the same, the petitioner preferred an appeal in Crl.A.No.17/2016 before the learned District and Sessions Judge, Thiruvarur, 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 respondent has no sufficient means to pay a sum of Rs.5,00,000/- to the petitioner and he did not file any document to prove his capacity to pay such a huge amount. He also submitted that the respondent has foisted a false case against the petitioner. Without considering the same in a proper perspective, the trial Court has convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and the same was also erroneously confirmed by the Appellate Court. Hence, the learned counsel sought to set aside the judgments of conviction and sentence passed by the Courts below.

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.At the outset, it is to be borne in mind that while exercising revisional jurisdiction, this Court cannot reappraise the evidence like a Court of appeal, unless, it is shown that the findings of facts arrived at by the Courts below are on the face of it, perverse.

6.According to the respondent/complainant, on 23.01.2014, the petitioner borrowed a sum of Rs.5,00,000/- from the respondent and gave a cheque bearing No.237858 dated 27.01.2014 drawn on State Bank of India, Thiruthuraipoondi Branch, for the said amount. At the request of the petitioner, the respondent presented the said cheque for collection, which was returned dishonoured with an endorsement "funds insufficient" on 28.01.2014. He issued a legal notice on 20.02.2014, calling upon the petitioner to pay the cheque amount of Rs.5,00,000/- within a period of 15 days. The petitioner refused to receive the said notice and hence, the same was returned to the respondent on 08.03.2014. Since she has committed the offence punishable under Section 138 of the Negotiable Instruments Act, the respondent filed the private complaint, which culminated in STC.No.16 of 2014 before the trial Court. To prove his case, the respondent examined himself as P.W.1 and marked Exs.P1 to P5 documents.

7.The defence taken by the petitioner/accused is that she has no transaction with the respondent as averred in the private complaint. Further, she bought a loan of Rs.50,000/- from one Veerapandi, Aandiyappan Kaadu Village, Vedaranyam Taluk, for

which she has given three blank signed cheques to the said Veerapandi. One among the said cheques was given by Veerapandi to the respondent and the same was misused for the purpose of filing the present complaint. To substantiate the same, the petitioner/accused has not adduced any oral or documentary evidence.

8. From the evidence and materials adduced by the parties, it is seen that the cheque in question was drawn from the account maintained by the petitioner and the same was presented for collection and was returned unpaid and the respondent issued legal notice, which was refused to receive by the petitioner. Further, the petitioner has admitted her signature found in the cheque in question during the course of the cross examination of P.W.1. Therefore, it is established that the respondent has discharged the initial burden by proving the ingredients attracting the offence under Section 138 of the Negotiable Instruments Act. Then, a presumption under Section 139 is drawn in favour of the respondent that the cheque in question was issued by the petitioner only towards legally enforceable debt or liability. Now, the burden is on the petitioner either to prove or at least to probabilise her defence and the standard of proof available for the defence side is preponderance of probability. It is not imperative on the part of the petitioner to rebut the presumption by examining herself as a witness and it would suffice, if she is able to do so from the evidence and materials adduced on the side of the respondent. It is pertinent to note that the petitioner has admitted her signature found in the cheque in question and hence, the presumption under Section 118 of the Negotiable Instruments Act regarding passing of consideration, lies in favour of the respondent. Hence, the petitioner has to rebut the same as well.

9. On the other hand, the petitioner has stated a different version that she has no transaction with the respondent as averred in the complaint. Further, she has bought a loan of Rs.50,000/- from Veerapandi, for which, she gave three blank signed cheques, one among which was misused by the respondent for foisting the present complaint.

10. It is well settled that whenever the accused in a criminal prosecution for an offence punishable under Section 138 of the Negotiable Instruments Act, comes forward with a plea that the cheque issued in favour of the other person, has been misused by the complainant for prosecuting him, either he should have examined the said person, in whose favour according to him, the cheque was issued, as evidence to that effect, otherwise he could have elicited answers from the witness examined on the side of the prosecution, which will make his case probable.

11. In this case, the petitioner has not examined any witness

including the said Veerapandi, nor cross examined the respondent's witness. Further, no document was filed to prove her defence. That apart, she did not send reply to the legal notice issued by the respondent, which is also fatal to her case. She simply denied the averments made in the complaint as false. In the absence of one such evidence and material, the trial Court has rightly observed that the petitioner failed to rebut the presumption drawn in favour of the respondent that the cheque was issued only towards discharge of a legally enforceable debt / liability and accordingly, convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentenced her for the same. The Appellate Court has also dealt with the case properly and rightly confirmed the findings rendered by the trial Court on merits. This Court finds no infirmity or illegality in the said concurrent findings rendered by the Courts below.

12. In the result, the Criminal Revision Case stands dismissed being devoid of merits. Consequently, connected Miscellaneous Petitions are closed. The trial Court is directed to secure the accused and commit her 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. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Thiruvarur.

2. The Judicial Magistrate
Fast Track Court,
Magistrate Level,Thiruthuraipoondi.

3. The Superintendent of Police,
Thiruvavarur District.

4. The Section Officer,
Crl. Section, High Court, Madras.

+1cc to Mr.Mr.Vimal B.Crimson, Advocate, S.R.No.17267

+1cc to Mr.S.Arivazhagan, Advocate, S.R.No.16559

Crl.R.C.No.605 of 2017

SSV(CO)
EU 26.6.2020



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