

Bail Slip

The Appellant/Petitioner/Accused namely A.P.T. Lues, S/o. A.P.Thomas was directed to be released on bail as per the order of this court dated 24.05.2017 in Crl.mp No.6651 of 2017 in Crl. Rc. No.696 of 2017, on the file of this court.

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.696 of 2017

A.P.T.Lues ... Petitioner

Vs.

S.C.Subramaniam ... Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order of conviction and sentence dated 24.02.2017 in Crl.A.No.64 of 2016 on the file of the I Additional District & Sessions Judge, Erode, confirming the order of conviction and sentence dated 14.03.2016 in C.C.No.409 of 2009 on the file of the learned Judicial Magistrate No.II, Erode.

For Petitioner : Mr.W.Camyles Gandhi
For Respondent : Mr.C.S.Saravanan

सत्यमेव जयते
O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. The respondent preferred a private complaint against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and the same was taken on file as CC No.409 of 2009 on the file of the learned Judicial Magistrate No.II, Erode. By judgment dated 14.03.2016, 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 him to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- 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.64/2016 before the

learned I Additional District and Sessions Judge, Erode, which ended in dismissal. Aggrieved over the same, the petitioner has come forward with this Criminal Revision Case.

2.The learned counsel for the petitioner has submitted that the respondent has no sufficient means to lend a sum of Rs.5,00,000/- to the petitioner and has not filed any document to prove his financial capacity to pay the said amount. Without considering the said aspect 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 prayed to set aside the judgments passed by the Courts below.

3.The learned counsel appearing 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.Before proceeding further, it is to be borne in mind that the entertainment of a second revision is statutorily prohibited, unless a case is made out that such order is illegal, perverse, unreasonable and brings out a situation, which is completely an abuse of the process of Court, even in exercise of inherent jurisdiction of this Court.

6.The case of the respondent/complainant is that on 06.06.2009, the petitioner/accused borrowed a sum of Rs.5,00,000/- from the respondent for his urgent needs as loan and in discharge of the said liability, he issued a post dated cheque bearing No.246668 dated 06.07.2009 drawn on Karur Vysya Bank Ltd, Erode-1 for the said sum of Rs.5,00,000/- to the respondent. At the request of the petitioner, the respondent presented the cheque for collection and the same was returned dishonoured for want of sufficient funds. The respondent issued a legal notice on 15.07.2009 calling upon the petitioner to repay the loan amount within a period of 15 days. Though the petitioner received the said notice on 16.07.2009, he failed to repay the amount nor sent any reply. Hence, the respondent has no other option except to prefer the private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. To prove his case, the respondent examined himself as P.W.1 and marked Exs.P1 to P5 documents.

7. Though the petitioner/accused denied the averments made in the complaint, he neither examined any one nor marked any document to support his defence that he has not borrowed any amount from the respondent. Further, he has not put forth any case that he has not issued the cheque in question and he was not liable to pay any amount to the respondent.

8. As it is evident from the evidence and materials adduced by the respondent that the petitioner has not disputed the issuance of cheque in question and the signature found therein, a presumption is drawn in favour of the respondent that there was a legally enforceable debt against the petitioner and the cheque in question was issued to the respondent in discharge of the said debt. In such circumstances, the petitioner has to rebut the same by probable defence or at least create a shadow of doubt on the cheque in question that the same was not issued to the respondent for any legally enforceable liability against the petitioner.

9. On the other hand, the petitioner, except raising a defence that he has not borrowed any amount from the respondent, has not adduced any evidence either in oral or documentary. Further, he failed to cross examine the respondent /PW1 to support his defence. Moreover, he did not send any reply denying the allegations made in the legal notice sent by the respondent, which is fatal to his case. Therefore, in the absence of one such evidence, the trial Court has rightly come to the conclusion that there was a legally enforceable liability and the petitioner issued the cheque in question to discharge the said liability, which was returned dishonoured for want of sufficient funds and thereby, he committed the offence under Section 138 of the Negotiable Instruments Act and accordingly, convicted him 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 good reason to interfere with the said factual concurrent findings rendered by the Courts below.

10. 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 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 I Additional District & Sessions Judge
Erode

2.The Judicial Magistrate No.II
Erode.

3. The Superintendent of Police Erode District.

Copy to: The Assistant Registrar
(Crl, side) High Court, Madras.

+ 1 Cc. to Mr.W.Cambles Gamdhi, Advocate SR.NO..15959

+ 1 Cc. to Mr.saravanan, Advocate SR.NO..16256

Crl.R.C.No.696 of 2017

JP(CO)
EU 26.6.2020

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