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BAIL SLIP

The Petitioner/Accused namely S.Natarajan, S/o.Somu was directed to be released on bail vide order dated 06.06.2017 made in Crl.M.P.No.6712 & 6910 of 2017 in Crl.R.C.No.709 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CRL.R.C.NO.709 OF 2017

S.Natarajan
S/o.Somu

... Petitioner/Accused

Vs.

V.S.Biju

... Respondent/Complainant

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the judgment of the Learned I Additional District and Sessions Judge, Erode dated 27.01.2017, passed in Crl.A.No.164 of 2015 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in S.T.C.No.46 of 2014 dated 02.12.2015.

For Petitioner : Mr.C.E.Pratap

For Respondent : Mr.C.S.Saravanan

ORDER

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 under Section 138 of the Negotiable Instruments Act and the same was taken on file as STC.No.46 of 2014 by the learned Judicial Magistrate, Fast Track Court No.I, Erode. After contest, the trial Court by judgment dated 02.12.2015, found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for fifteen days. Challenging the same, the



petitioner preferred an appeal in CrI.A.No.164 of 2015 before the learned I Additional District and Sessions Judge, Erode, which ended in dismissal. Aggrieved over the same, the petitioner has filed the present Criminal Revision Case.

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2.The learned counsel for the petitioner has submitted that the trial Court without considering the fact that the petitioner was not in Erode on 21.05.2013, the date on which, the cheque in question came to be issued, has erred in coming to the conclusion that the cheque in question was issued by the petitioner to the respondent for legally enforceable liability and the same was also erroneously confirmed by the Appellate Court as well. The learned counsel further submitted that the respondent had no sufficient means to pay a huge sum of Rs.3,20,000/- to the petitioner and he did not file any document to prove his financial capacity. Stating so, the learned counsel prayed for setting aside the judgments 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.The case of the respondent/complainant is that on 21.05.2013, the petitioner/accused borrowed a sum of Rs.3,20,000/- for his urgent expenses from the respondent and to discharge the said liability, he issued a post dated cheque bearing No.675127 drawn on Dhanalakshmi Bank Ltd., Erode Branch dated 21.06.2013 for the said sum. On the request of the petitioner, the respondent presented the cheque for collection, which was returned dishonoured as funds insufficient on 24.06.2013. Thereafter, the respondent issued a legal notice on 29.06.2013 calling upon the petitioner to pay the cheque amount. The said legal notice was returned as it was not claimed by the petitioner on 12.07.2013. Since the petitioner neither repaid any amount nor gave any reply, the respondent preferred the private complaint for the offence under Section 138 of the Negotiable Instruments Act.

6.To prove his case, the respondent examined himself as P.W.1 and marked Exs.P1 to P4 documents. On the side of the defence, DW1/Junior Assistant attached to the State Transport Corporation, was examined and Exs.D1 to D3 documents were marked.



7. From the evidence and materials adduced by the parties, it is clear that the petitioner has not disputed the issuance of cheque in question and the signature found therein. As such, a presumption is drawn in favour of the respondent that the cheque in question was issued by the petitioner in discharge of the legally enforceable debt to the respondent. In the said circumstances, the petitioner has to rebut the same by adducing oral and documentary evidence to the effect that the cheque in question was not issued for any legally enforceable debt.

8. Admittedly, the petitioner did not receive Ex.P3 notice sent by the respondent informing him about the return of the cheque in question for want of sufficient funds and hence, he did not send any reply to the same. However, he denied the charge levelled against him during section 313 Cr.P.C questioning and stated that it was a false case. He examined one K.Thiyagarajan as DW1 and marked Exs.D1 to D3 documents to the effect that on 21.05.2013, the date on which the cheque in question came to be issued, he was not available in Erode. The defence raised by the petitioner is that he was not at Erode at the time of issuance of cheque and he was on duty in the bus and went to Kambam and returned only on 25.05.2013 and therefore, it was not possible for him to issue the cheque in question on 21.05.2013. However, there was no mentioning in Ex.D1/Attendance Register that the petitioner went to Kambam on 21.05.2013 and his signature was not found in Ex.D2/Electronic collection sheet and therefore, the petitioner has not candidly proved his defence. Thus, the trial Court has correctly held that the respondent proved his case that the cheque was issued by the petitioner in discharge of the legally enforceable debt to the respondent; and the same was returned dishonoured for want of sufficient funds on the part of the petitioner and hence, the petitioner committed the offence under Section 138 of the Negotiable Instruments Act. The Appellate Court has also dealt with the case properly and rightly confirmed the findings rendered by the trial Court on merits.

9. This Court finds no infirmity or illegality in the aforesaid factual concurrent findings rendered by the Courts below. Moreover, it is settled law that the entertainment of second revision is 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.

10. In fine, this Criminal Revision has no merit and accordingly, stands dismissed. 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(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge
Erode.
2. The Judicial Magistrate
Fast Track Court No.I, Erode.
3. The Principal Sessions Judge, Erode.
4. The Chief Judicial Magistrate, Erode.

Copy To

1. The Assistant Registrar,
Criminal Side, High Court, Madras-104.
2. The Deputy Registrar,
Criminal Section, High Court, Madras-104.
3. The Section Officer,
Criminal Section, High Court, Madras-104.

+1cc to Mr.C.S.Saravanan, Advocate, S.R.No.16257

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.16417

Crl.R.C.No.709 of 2017

RSI (CO)
CS/14/07/2020