## **Bail Slip**

The Petitioner in Crl.RC.No.710 of 2017 viz., M.Thiyagarajan, G/o.Pushpa, aged 35 years was directed to be released on bail as per order of this Court dated 05/06/2017 made in Crl.MP.No.6714 of 2017 in Crl.A.No.710 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Revision Case No.710 of 2017
& Crl.M.P.No.6714 of 2017

M.Thiyagarajan .. Petitioner/Accused

- Vs. -

S.Baranidharan .. Respondent/Complainant

Prayer: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement made in Crl.A.No.169 of 2016 on the file of the learned II Additional District and Sessions Judge, Erode, dated 16.02.2017, confirming the judgement made in STC No.193 of 2015 on the file of the learned Judicial Magistrate No.II, Erode, Erode District, dated 26.08.2016.

For Petitioner : Mr. C.Prakasam

For Respondent : Mr. I.C.Vasudevan

O R D E R

As against the concurrent conviction and sentence to undergo Simple Imprisonment for six months and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment, for the offence under Section 138 of the Negotiable Instruments Act, imposed by the Courts below against the petitioner / accused, he is before this Court.

2. The case of the complainant / respondent herein before the Courts below is that, on 11.01.2016 towards household expenses, the petitioner has borrowed a sum of Rs.4,50,000/- from the complainant and to discharge such liability, the petitioner had handed over a cheque bearing No.000791 dated

09.03.2015 to the complainant. When the said cheque was presented for encashment on 27.03.2015, the same was returned with an endorsement "Dormant". Hence the complainant issued a statutory notice on 24.04.2015 and having received the notice, the petitioner neither replied to the notice nor returned the amount. Hence the complaint was filed by the respondent / complainant.

3. Contrary to that, the case of the accused / petitioner herein before the Courts below is that the petitioner borrowed Rs.50,000/- from one Prakash, who was running finance business along with the petitioner; at that time the petitioner handed over the signed blank cheque leaves to the said Prakash for security purposes; subsequently the petitioner repaid the said amount to Prakash; the petitioner requested the said Prakash to return the cheque leaves, but he dragged on the matter; Prakash quarrelled with the petitioner, dissolved the finance business and closed the business; to wreck vengeance against the petitioner, Prakash handed over the cheque to the respondent herein and the respondent utilized the said cheque and filled up the amount to the tune of Rs.4,50,000/- and presented the same in his Bank, which was returned with an endorsement "Dormant".

4. The Courts below, having held that Prakash was not examined by the petitioner herein and the petitioner has neither replied to the notice sent by the respondent nor cross-examined the complainant on that aspect, has convicted and sentenced the petitioner, as aforesaid.

5. Heard both sides.

6. The learned counsel for the petitioner submitted that the Courts below failed to consider that the liability of the petitioner to pay the sum of Rs.4,50,000/- was not proved by the respondent herein in a proper manner; the reason for the cheque bounced, in this case, was "Dormant" and hence the question of maintaining the accounts does not arise, which the Courts below failed to appreciate. He also submitted that the petitioner is not liable to meet out the alleged debt, as projected by the respondent.

7. Per contra, the learned counsel for the respondent / complainant submitted that based on the materials, evidence and settled principles of law the Courts below have concurrently found the petitioner guilty under Section 138 of the Negotiable Instruments Act, convicted and sentenced the petitioner and hence prays for dismissal of the case filed by the petitioner.

8. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

9. It is admitted by the petitioner that Ex.P-1-Cheque was issued by him and the signature found therein was that of the petitioner. It is quite natural that the person, who issued or was responsible to issue the cheque, has to rebut the presumption placing necessary evidence, because when a cheque is issued towards payment of certain amount, it is presumed that there was existence of a legally enforceable debt. When the issuance of the cheque is admitted by the petitioner, the respondent is entitled to invoke presumption under Section 118 and 139 of the Negotiable Instruments Act for discharging the subsisting liability and in this case, rightly the respondent has invoked such presumption. The presumption will live, exist and survive and shall end only when the contrary is proved by the petitioner, i.e., the cheque was not issued for consideration and in discharge of any debt or liability. While observing so, this Court also keeps in mind that a presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

10. Even assuming the case of the petitioner to be true that the cheque was issued during the year 2011, for the purpose of security, as per the law laid down in 2006 Cri.L.J. 452 M/s. STP Limited v. Usha Paints and 2006 (Cri.) 3760 (Kan) (Smt. Umasamy v. K.N.Ramanatan) the petitioner is held liable to be prosecuted under Section 138 of the Negotiable Instruments Act. Primarily, the onus to prove the fact that the cheque was not issued for discharge of any debt and liabilities lies on the accused (petitioner) and not on the (complainant) respondent. Here, in this case, the petitioner has not rebutted such onus by producing oral and documentary evidence, which is a fatal to the case of the petitioner.

11. Further, there is no iota of evidence or document on the side of the petitioner by way of reply to prove that for the notice sent by the complainant, there is no legally enforceable debt or liability due to the complainant or not. Hence on this score also, the petitioner has not rebutted the presumption as contemplated under Section 139 of the Negotiable Instruments Act.

12. In view of the above reasonings, this Court is of the opinion that cogent and convincing reasonings have been recorded by the Court below for convicting and sentencing the petitioner/accused and hence they are confirmed as such. This Criminal Revision Case is devoid of merits and hence the same is

dismissed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law. 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. 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 learned 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 Case. Registry is directed to transmit the original records, if any, to the respective Courts forthwith. Consequently the connected Crl.MP is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge, Erode
2. The Judicial Magistrate No.II, Erode, Erode District
3. The Chief Judicial Magistrate, Erode.

Copy to : 1.The Assistant Registrar(Crl.Side),
High Court of Madras, Chennai -104.

2.The Section Officer, Criminal Section,
High Court of Madras, Chennai -104.

+1cc to Mr.I.C.Vasudevan, Advocate SR.No.13754

AKM/18.03.2020/ 4P-7C/



Criminal Revision Case No.710 of 2017
& Crl.M.P.No.6714 of 2017