

Bail Slip

The Appellant/Accused K.Najmudeen was released on bail (Accused Not in Jail) order dated 22.09.2015 granted made in MP(MD). No.1/2015 in Crl.R.C. (MD) .No.441/2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

CRL.R.C. (MD)No.441 of 2015

K.Najmudeen : Petitioner

-vs-

Mohammed Ali : Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the Judgment dated 12.06.2015 passed in C.A.No.134 of 2011 on the file of the 4th Additional Sessions Court, Tirunelveli confirming the Judgment dated 02.08.2011 passed in C.C.No.2 of 2005 on the file of the Judicial Magistrate No.4, Tirunelveli.

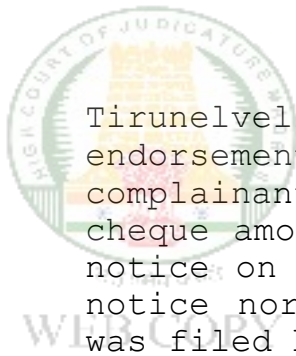
For Petitioner : Mr.T.Selvan

For Respondents : No appearance

ORDER

This Criminal Revision Petition is filed by the accused against the concurrent findings of the conviction passed by the Lower Court as well as the Lower Appellate Court.

2.The case of the petitioner is that he is the accused in C.C.No.2 of 2005 on the file of the Judicial Magistrate No.VI, Tirunelveli, for the offence under Sections 138 and 142 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The respondent/complainant has filed a complaint before the Lower Court stating that on 03.10.2004, the accused had borrowed a sum of Rs.2,75,000/- as loan to meet out his business expenditure and promised to repay the said amount within one month. But the petitioner/accused did not repay the amount after completion of one month. But on 09.11.2004, he had issued a cheque bearing No.215093 dated 10.11.2004 of Indian Bank, Ambalathara Branch, Trivandrum. The said cheque was presented on 10.11.2004 before the Indian Bank,



Tirunelveli Junction Branch, which instrument was returned with endorsement stating that **"Account Closed"**. Thereafter, the complainant has sent a legal notice on 07.12.2004 demanding the cheque amount within 15 days and the accused has received the legal notice on 10.12.2004. However, the accused neither sent any reply notice nor paid the cheque amount. Therefore, the said complaint was filed before the trial Court.

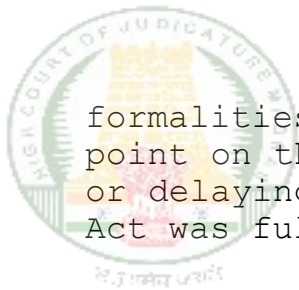
3. On behalf of the respondent/complainant, he himself has examined as P.W.1 and marked Exs.P.1 to P.15. On behalf of the petitioner/accused R.W.1 and R.W.2 were examined and Exs.R1 to R7 were marked. After hearing the rival submissions, the trial Court has found the petitioner/accused guilty for the offence under Section 138 of the Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- and also directed to pay a compensation of Rs.2,75,000/- to the complainant/respondent herein under Section 357(3) of Cr.P.C., in default to undergo simple imprisonment for one month.

4. Assailing the said order, the petitioner/accused has preferred an appeal before the Lower Appellate Court. The Lower Appellate Court has confirmed the conviction and modified the sentence by reducing from one year simple imprisonment to three months simple imprisonment. Against the said finding, the present Criminal Revision Petition is filed.

5. The learned counsel appearing for the petitioner would submit that admittedly, the petitioner/accused and the respondent/complainant are close relatives and there is no legally enforceable liability and no correspondence with regard to the loan borrowed by the petitioner. In the absence of any material and correspondence between the parties, convicting the accused is unsustainable in law and there is no document filed to prove the legally enforceable liability. He would further submit that the trial Court as well as the lower appellate Court concurrently failed to consider this fact and enforced the punishment on the accused, which is unsustainable one. Hence, he prayed for allowing this revision.

6. Though this criminal revision was filed in the year 2015, however, till date, the petitioner has not taken any steps to serve the notice on the respondent/complainant. Considering the delay in pending the case, I am inclined to proceed with the matter with available records.

7. Perusal of the records would show that admittedly, the cheque was issued on 07.12.2004 by the petitioner/accused for legally enforcing the liability and the said cheque was presented before the Indian Bank, Tirunelveli Junction Branch and the same was returned with an endorsement that **"Account closed"** and other legal



formalities were completed and the petitioner did not raise any point on the technical aspects for issuing and presenting the cheque or delaying the legal notice and the limitation prescribed under the Act was fully complied with.

8.The only point arises for consideration is whether any legally enforceable liability or not. As that point also elaborately discussed by the trial Court as well as lower appellate Court, this Court is unable to take a contra view, taken by the trial Court as well as the lower appellate Court. The revision is maintainable only if the error on the face of records and correctness of the legality. In the absence of perversity, I am not inclined to interfere with the concurrent findings of the trial Court as well as the lower appellate Court.

9.In the result, the criminal revision fails and the same is dismissed. The trial court is directed to take steps to secure the presence of the petitioner and commit him to prison to undergo the period of sentence imposed on him.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn

To

1.The 4th Additional Sessions Court, Tirunelveli.

2.The Judicial Magistrate No.4, Tirunelveli.

CRL.R.C. (MD) No.441 of 2015
10.03.2020

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