

BAIL SLIP

The appellant/accused namely P.Kadarkarai Male/62 years, S/o.Palanisamy Nadar was directed to be released on bail as per order of this Court dated 02/06/2016 in CRL.MP(MD).No.4058 of 2016 in CRL.RC.(MD).No.303 of 2016 on the file of this court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.R.C.(MD)No.303 of 2016

P.Kadarkarai

... Petitioner

Vs.

A.Selvamary

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C, to call for the records relating to order passed by the Principal Sessions Judge, Virudhunagar at Srivilliputhur, dated 23.03.2016 in C.A.No.64 of 2010 dismissing the appeal and sustaining the order of conviction passed by the Judicial Magistrate No.I, Srivilliputhur in S.T.C.No.617 of 2009 dated 07.06.2010 and set aside them and dismiss the complaint.

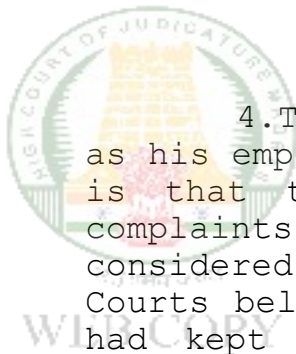
For Petitioner : Mr.T.Amjad Khan
For Respondent : No appearance

O R D E R

Heard the learned counsel for the revision petitioner. The complainant has been served in person but there is no representation on the side of the complainant/respondent herein.

2.The respondent has filed S.T.C.No.617 of 2009 before the learned Judicial Magistrate No.I, Srivilliputhur for the offence under Section 138 of Negotiable Instruments Act. The case of the respondent is that the accused borrowed a sum of Rs.3,00,000/- and that towards repayment of the said amount issued the complaint cheque. The complaint cheque was presented for collection but the same was returned for the reason that the account of the accused did not have "sufficient funds". The complainant thereupon issued Ex.P5/statutory notice. The same was received by the complainant as evidenced by Ex.P6/acknowledgement card. Since the accused did not comply with the demand set out in the statutory notice, the instant complaint came to be lodged.

3.The complainant examined himself as P.W.1 and marked Exs.P1 to P8. On the side of the accused, the accused examined himself as D.W.1 and marked Exs.D1 and D2.



4.The defence of the accused was that Susai Mariyan worked as his employee and stole the complaint cheque. His further defence is that three cheques were stolen by Susai Mariyan and these complaints were filed by him and his sister. This defence was considered at length by the Trial Magistrate and rejected. The Courts below decline to believe the version of the accused that he had kept the signed blank cheques and that the same could be accessed by his employee. In fact, the Courts below have given up factual findings that there was nothing on record that Susai Mariyan was employed under the accused. If such valuable security had been stolen, the accused would have definitely given a police complaint. No such complaint was also given. In fact in response to the statutory notice, no reply was also given by the accused. Taking note of all these aspects, the Courts below found that the accused had committed the offence under Section 138 of Negotiable Instruments Act and had come out with a false defence.

5.I am exercising only revisional jurisdiction. Even though, the learned counsel appearing for the accused reiterated all the contentions set out in the memorandum of grounds, I am of the view that nothing has been brought out to show that the findings of the Courts below are vitiated by materials irregularity or perversity. In this view of the matter, I have to no other option but to confirm the conviction imposed on the accused.

6.However, the learned counsel appearing for the revision petitioner would point out that the accused is a senior citizen and that the transactions are more than 12 years old. Taking note of the mitigating circumstances pleaded by the learned counsel for the accused, I am of the view that instead of straightaway sentencing him to imprisonment, the accused can be given one more opportunity to undo the mischief. Therefore, even while confirming the conviction imposed on the accused, the sentence is modified as follows:-

(i) The accused is directed to deposit the cheque amount of Rs.3,00,000/- (Rupees Three Lakhs Only) to the credit of S.T.C.No.617 of 2009 on the file of learned Judicial Magistrate No.I, Srivilliputhur within a period of eight weeks from the date of receipt of a copy of this order.

(ii) It is open to the complainant to withdraw the said amount without notice to the accused.

(iii) If the accused fails to deposit the cheque amount within the period stipulated above, the sentence imposed as modified by the Sessions Court will be restored automatically. It is seen that at the time of obtaining suspension of sentence, some amount was deposited by the accused. The accused has to deposit the balance amount.



7. With this modification in the matter of sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (Cs-III)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To:

1. The Principal Sessions Court,
Virudhunagar at Srivilliputhur
2. The Judicial Magistrate No.I,
Srivilliputhur.
3. The Section Officer,
Criminal Section(2Copies),
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.Srinivasan(Mr.T.Amjad Khan), Advocate, SR.No.23567 dated 02/12/2020

Crl.R.C. (MD) No.303 of 2016
30.11.2020

SV2 (CO)
KB(05.02.2021) 3P 6C