



BAIL SLIP

The Petitioner/Accused T.Manivasagam, S/o.Thangavel, aged 62 years was released on bail vide court order dated 03.06.2016 in Crl MP(MD)4112 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)No.308 of 2016

T.Manivasagam

... Petitioner

Vs.

Meiyazhagan

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and set aside the impugned judgment dated 29.03.2016 passed in Crl.A.No.47 of 2015 on the file of the II Additional District and Sessions Judge, Thanjavur, confirming the judgment dated 31.07.2015 passed in S.T.C.No.406 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Thanjavur.

For Petitioner : Mr.P.T.Ramesh Raja
For Mr.M.Saravanan

For Respondent : Mr.G.Karnan

O R D E R

Heard the learned counsel on either side.

2.The respondent herein namely, Meiyazhagan filed S.T.C.No.406 of 2013 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level), Thanjavur, for the offence under Section 138 of Negotiable Instrument Act against the petitioner herein.

3.The case of the complainant is that the accused borrowed a sum of Rs.1,00,000/- from him for his daughter educational expenses and his family expenses on 04.04.2005 and agreed to repay the same with interests. Towards repayment of the said debt, the accused issued Ex.P1/complaint cheque for a sum of Rs.1,00,000/-. The cheque was presented for collection on 24.01.2006. It was returned for the reason of "insufficiency of fund" in the account of the accused. The complainant thereupon issued legal notice/Ex.P.3 dated 24.02.2006. The same was also received by the accused. The accused issued reply to the said legal notice vide Ex.P.5 dated 10.03.2006. The complainant thereupon issued a rejoinder.

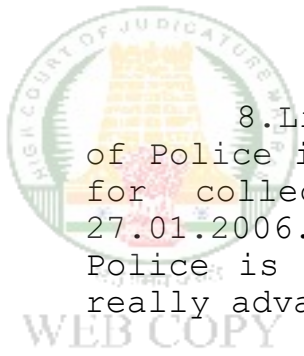


4.The complainant examined himself as P.W.1 and the Bank Manager as P.W.2 and marked Exs.P1 to P8. On the side of the accused, the accused examined himself as D.W.2 and the Bank Manager as D.W.1 and marked Exs.R1 to R7.

5.The Trial Magistrate after a detailed consideration of the evidence on record, sentenced the accused to one year simple imprisonment and also directed him to pay the cheque amount of Rs.1,00,000/- as compensation and default sentence was also imposed vide judgment dated 31.07.2015. Questioning the same, the accused filed C.A.No.47 of 2015 before the II Additional District and Sessions Court, Thanjavur. Vide judgment dated 29.03.2016, the appeal was dismissed and the judgment of the Trial Court was confirmed as such. Questioning the same, this criminal revision case has been filed.

6.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds. He contended that the cheque leaf in question was stolen by the complainant and misusing the same, the instant prosecution came to be lodged. In support of his theory of theft, the learned counsel for the petitioner drew my attention to Ex.R.1 dated 24.08.2005. Ex.R.1 is a letter from the petitioner to the Bank concerned alleging theft of the cheque leaf in question. The learned counsel for the petitioner also pointed out that vide Ex.R7 dated 05.02.2005, a complaint was given to the Superintendent of Police, Thanjavur.

7.I am not persuaded by the aforesaid submissions. The Court below had pointed out that the only material produced by the accused was Ex.R2/courier receipt. Ex.R2/courier receipt is actually dated 24.08.2004 that is one year prior to the date of Ex.R1. The learned counsel for the petitioner would point out that courier staff would have committed clerical error while writing out the date and he pointed out that since it bears the date "24.08.2004" it is too significant. In any event, mere production of courier receipt is not sufficient to show that a complaint was lodged by the accused. In order to establish his case that he had already lodged a complaint before the Bank concerned, the accused examined D.W.1/Ravichandran. But this theory of stolen cheque could not be established through the evidence of D.W.1. When a specific question was put to Ravichandran by the learned counsel for the accused, Ravichandran pleaded utter ignorance. This Court must remind the accused that D.W.1/Ravichandran was examined as a witness for accused. He was examined neither as the complainant's witness nor as Court witness. Therefore, the answers given by D.W.1/Ravichandran are clearly binding on the accused. Therefore, neither Ex.R2 nor the testimony of D.W.1/Ravichandran would any way establish the defence version that the cheque leaf in question was stolen.

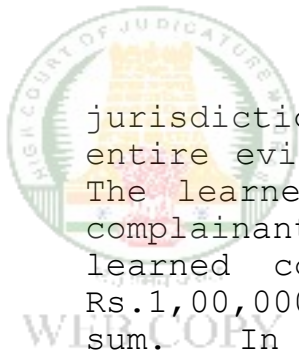


8.Likewise, Ex.R7 namely, complaint lodged to Superintendent of Police is dated 05.02.2006. The cheque in question was presented for collection on 26.01.2006 itself and returned unpaid on 27.01.2006. Therefore, the complaint to the Superintendent of Police is thus later in point of time and therefore, it does not really advance the case of the accused.

9.The learned counsel for the accused would also allege that the complainant had forged his signature in the cheque. He also placed reliance on the decision of the Hon'ble High Court of Karnataka made in Criminal Revision Petition No.52 of 2016, dated 05.08.2016. The Hon'ble Karnataka High Court had held that where the signature found in the cheque is disputed by the accused, the burden is squarely on the complainant to prove the same. In this case, fortunately for the complainant, the accused himself took out Crl.M.P.No.2873 of 2006 before the Trial Court for comparison of signature. The Court below by a reasoned order dismissed the said petition. The accused for the reasons best known to him did not choose the challenge the same. Therefore, there is no merit in the contention of the learned for the accused that the complainant ought to have taken steps for obtaining forensic opinion. Though I am strongly persuaded by the ratio laid down in the aforesaid decision relied upon by the learned counsel for the accused, in view of the dismissal of Crl.M.P.No.2873 of 2006 filed by the accused himself, I am not able to apply the aforesaid decision of the Hon'ble Karnataka High Court.

10.That apart, when the cheque was presented for collection, it was returned by the Bank Manager for the reason "funds insufficient". If the signature found in the cheque had differed from the sample or specimen signature, certainly that would have also been the reason for return of the cheque. If the reason for return of the cheque is "signature differs", then certainly the complainant would be obliged to establish that the signature found in the cheque is that of the accused is on the complainant. But when the reason for dishonor is "funds insufficient", I am of the view that the accused cannot conveniently shift burden to the complainant.

11.The Courts below have exhaustively and elaborately considered both these contentions urged by the learned counsel for the accused and rendered findings against him. Of course, as rightly pointed by the learned counsel for the accused, the lower Appellate Court had erroneously mentioned that the accused did not take steps for referring the cheque for comparison of signature. But I may also mention here that the Trial Magistrate had given a finding that the signature of the accused found in the vakalat is differing from his own signatures found subsequently in the Court records. Therefore, the stand of the accused that the signature found in the complaint cheque does not appear to be his will have to be seen in the pinch of salt. I am only exercising revisional



jurisdiction. The Courts below have elaborately considered the entire evidence on record and given a finding against the accused. The learned counsel for the accused pointed out the means of the complainant to lend such a huge amount has been challenged. But the learned counsel for the complainant submitted that a sum of Rs.1,00,000/- in the year 2005 cannot be said to be such a large sum. In any event, the wife of the complainant is a retired Government school teacher. The accused also admits that there was transaction between the parties. Of course, the accused would say that he borrowed only a sum of Rs.1,000/- from the wife of the complainant for interests.

12.Since I am not persuaded by the submissions of the learned counsel for the accused that the findings of the Court below are vitiated by material irregularity or perversity, I am of the view that the revisional jurisdiction cannot be exercised in favour of the revision petitioner.

13.I find no ground to interfere. The conviction imposed on the petitioner is confirmed. However, taking note of the age and other circumstances of the revision petitioner, the sentence imposed on him is modified as follows:-

(i) The accused is directed to deposit the cheque amount of Rs.1,00,000/- (Rupees One Lakh Only) to the credit of STC.No.406 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Thanjavur, 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 complies with this direction to deposit the cheque amount, the sentence imposed on him will not be enforced. If the accused fails to comply with the direction, the sentence imposed by the Court below will be enforced against the accused.

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

Sd/-

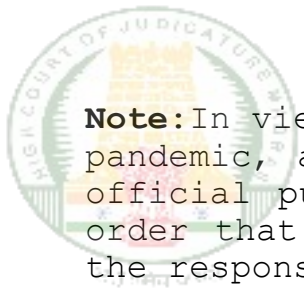
Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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.

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To:

- 1.The II Additional District and Sessions Court,
Thanjavur
 - 2.The Judicial Magistrate,
Fast Track Court, Thanjavur.
 - 3.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)
- +1 CC to Mr.M.SARAVANAN, Advocate (SR-23776[F] dated 03/12/2020)

Crl.R.C. (MD) No.308 of 2016
02.12.2020

VB (22.12.2020) 5P 6C