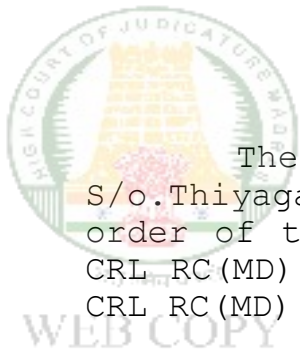




BAIL SLIP

The appellant/Sole accused namely T.Sekar, male, aged 55 S/o.Thiyagarajan, was directed to be released on bail as per the order of this Court dated 05/02/2016 in CRL.MP.(MD) 734 of 2016 in CRL RC(MD) 31 of 2016 and 18/09/2020 in CRL.MP.(MD) 4657 of 2020 in CRL RC(MD).31 of 2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.31 of 2016

T.Sekar ... Petitioner/Appellant

Vs.

S.Chokkalingam ... Respondent/Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records pertaining to the order in C.A.No.76 of 2014 on the file of the II Additional District & Sessions Judge (Fast Track Judge), Thanjavur and set aside the concurrent judgment of the Lower Court and acquit the petitioner.

For Petitioner	: Mr.V.Kannan, Legal Aid Counsel.
For Respondent	: No appearance

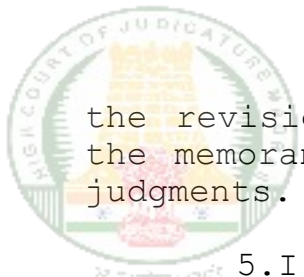
O R D E R

Heard the learned counsel appearing for the revision petitioner. There is no appearance on the side of the respondent.

2.The respondent namely, S.Chokkalingam filed S.T.C.No.122 of 2012 on the file of the learned Judicial Magistrate/Fast Track Court, Thanjavur against the petitioner herein for the offence under Section 138 of Negotiable Instruments Act.

3.The learned Trial Magistrate by judgment dated 02.07.2014 found the revision petitioner guilty of the said offence and sentenced him to undergo simple imprisonment for one year and also pay compensation to the complainant to the tune of Rs.2,70,000/-. Aggrieved by the same, the revision petitioner filed C.A.No.76 of 2014 before the learned II Additional District & Sessions Judge, Thanjavur. By judgment dated 29.07.2015, the judgment of the Trial Court was confirmed and the appeal was dismissed. Challenging the same, this criminal revision case came to be filed.

4.Since the learned counsel who filed the criminal revision case did not appear, I directed the Registry to appoint a legal aid counsel. Today, Mr.V.Kannan, learned legal aid counsel appeared for



the revision petitioner reiterated all the contentions set out in the memorandum of grounds and wanted me to set aside the impugned judgments.

5.I carefully considered all the contentions putforth on behalf of the revision petitioner and also went through the materials on record. It is seen that the case of complainant is that the accused had borrowed a sum of Rs.2,70,000/- from the complainant and towards discharge of liability to repay the said amount issued complaint cheques namely, Exs.P2 and P3. Ex.P2 is for a sum of Rs.1,30,000/- while Ex.P3 is for a sum of Rs.1,40,000/-. Both the cheques were drawn on SBI, Thanjavur Branch in favour of the complainant. The complainant presented the cheques for collection on 01.08.2011 but they were returned on the next day for the reason that the fund in the account of the accused was insufficient. Thereupon, the complainant issued Ex.P6/statutory notice. Though the accused received the same and also issued reply notices vide Exs.P9 and P10, he had not chosen to comply with the demand set out in the statutory notices. That led to the filing of the said complaint.

6.The complainant examined himself as P.W.1 and marked Exs.P1 to P11. On the side of the accused, three witnesses were examined but interestingly the defence witnesses supported the case of the complainant.

7.I also note that on the side of the complainant the promissory note namely, Ex.P1 has been marked in original. Since the signatures appearing on the complaint cheques are not in dispute and since the promissory note has also been marked, there is a *prima facie* presumption against the accused under Section 139 of Negotiable Instruments Act. The accused had not examined himself as witness. The presumption raised against the accused has not at all been rebutted and that is the clear finding rendered by the learned Trial Magistrate, the same has also been confirmed in appeal also.

8.I am exercising revisional jurisdiction. It has not been shown as to how the findings of the Courts below are vitiated by any material irregularity or perversity. I see no ground to interfere with the findings of the conviction rendered by the Courts below. However, taking note of the special facts and circumstances pleaded by the learned legal aid counsel, I am of the view that if the accused pays the cheque amount, he need not be sent to prison. Therefore, even while confirming the conviction imposed by the Courts below, the sentence imposed on the petitioner are modified in the following terms:-

"(i) The accused is directed to deposit the cheque amount of Rs.2,70,000/- (Rupees Two Lakhs and Seventy Thousand) to the credit of S.T.C.No.122 of 2012

<https://hcservices.ecourts.gov.in/hcservices/> 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) The said amount can be withdrawn by the complainant without notice to the accused.

(iii) If the accused fails to deposit the cheque amount within the period stipulated above, the sentence imposed by the Trial Court and confirmed by the Sessions Court will be restored automatically. I make it clear that the accused will not be entitled to file any application for extension of time also."

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

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ias

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 Judicial Magistrate,
Fast Track Court, Thanjavur.
2. -Do-Thro'
The Chief Judicial Magistrate, Thanjavur District at Kumbakonam.
3. The II Additional District & Sessions Court,
(Fast Track Court), Thanjavur.
4. -Do-Thro'
The Principal Sessions Judge, Thanjavur District.
5. The Officer Incharge, Sub Jail, Kumbakonam, Thanjavur District.
6. The Section Officer, Criminal Section
Madurai Bench of Madras High Court,
Madurai. (2Copies)

Crl.R.C. (MD) No.31 of 2016
30.11.2020

NA (CO)

KB (21.12.2020) 3P 8C

<https://hcservices.ecourts.gov.in/hcservices/>