



Bail Slip

S.Kumaran, S/o.Susidrabose, Male, aged about 37 Years/2016
Sole Accused was released on bail vide court order dated 08.06.2016
made in CRL.MP(MD)NO.4317 of 2016 in CRL.RC(MD).NO.337 of 2016.

WEB COPY

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.337 of 2016

Kumaran

.. Petitioner/Appellant/
Accused

Vs.

Rajeshkumar

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C., to revise the order of conviction and sentence imposed on the petitioner by the I Additional District and Sessions Judge, Tirunelveli, dated 28.10.2015 made in C.A.No.39 of 2014 by confirming the order of conviction and sentence imposed by the Judicial Magistrate, Valliyoor, made in C.C.No.243 of 2013 dated 18.03.2014 and acquit him from the alleged crime.

(Prayer is amended vide order dated 18.08.2016
in Crl.M.P.(MD)No.6948 of 2016)

For Petitioner : Mr.S.Palanivelayutham

For Respondent : Mr.A.N.Ramanathan

ORDER

Heard the learned counsel on either side.

2. The revision petitioner was prosecuted by the respondent, namely, Rajeshkumar, for the offence under Section 138 of the Negotiable Instruments Act, in C.C.No.243 of 2013 on the file of the Judicial Magistrate, Valliyoor.

3. The learned trial Magistrate by Judgment dated 18.03.2014 found the petitioner guilty of the said offence and sentenced him to undergo one year Simple Imprisonment and also directed him to pay



compensation of Rs.1,00,000/-. Aggrieved by the same, the revision petitioner had filed C.A.No.39 of 2014 before the I Additional District and Sessions Judge, Tirunelveli. The appellate Court dismissed the appeal on 28.10.2015 and confirmed the Judgment of the trial Magistrate. Challenging the same, this criminal revision has been filed.

4. The case of the complainant is that the accused had borrowed a sum of Rs.1,00,000/- and towards repayment of the same, issued a complaint cheque Ex.P.1. When the complaint cheque was presented for collection, the same was dishonoured. The complainant issued Ex.P.4 Statutory Notice. But then, the same was returned unserved. Since the accused did not comply with the demand set out in the statutory notice, the instant private complaint came to be filed. The complainant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. The accused Kumaran examined himself as D.W.1 and one Vettum Perumal was examined as D.W.2.

5. The defence of the accused is that the complainant is none other than his brother-in-law and that they had no financial transaction as such and that his wife had stolen the cheque in question and presented the same for collection through her brother.

6. The Courts below have rightly found that the said defence is rather far-fetched and unbelievable. I am exercising my revisional jurisdiction. Though the learned counsel appearing for the accused reiterated all the contentions set out in the memorandum of grounds, I am not persuaded to hold that the findings of the Courts below are vitiated by perversity or irregularity. The signature appearing in the complaint cheque is admitted. Therefore, there is a *prima facie* presumption raised under Section 139 of the Negotiable Instruments Act. The accused could not rebut the said presumption.

7. I have carefully gone through the record and I am satisfied that the said finding is well founded. Therefore, I am inclined to confirm the conviction imposed on the accused. But then, I am of the view that the accused can be given one more opportunity to pay the cheque amount. Therefore, even while confirming the conviction, the sentence imposed on the revision petitioner is modified as follows:-

i) The revision petitioner is directed to deposit the cheque amount of Rs.50,000/-(Rupees Fifty Thousand only) to the credit of C.C.No.243 of 2013 on the file of the Judicial Magistrate, Valliyoor, within a period of eight weeks from the date of receipt of a copy of this order.

ii) The complainant can withdraw the said amount without notice to the accused. If the accused fails to deposit the cheque amount within the time stipulated above, the sentence imposed on the revision petitioner by the Courts

<https://hcservices.hcservices.gov.in/hcservices> automatically restored.



iii) I make it clear that filing of petition for extension of time will not at all arise.

8. With this modification in the matter of sentence, this criminal revision stands partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

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 I Additional District and Sessions Judge,
Tirunelveli.
2. The Principal Sessions Judge, Tirunelveli District.
3. The Judicial Magistrate,
Valliyoar.
4. The Chief Judicial Magistrate, Tirunelveli District.

Copy to:

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.(2 Copies)

Crl. R.C.(MD)No.337 of 2016

30.11.2020

ARK (CO)

NR (23/12/2020) 3P : 7C