

**BAIL SLIP**

The Appellant/Sole Accused namely B.Poongothai, W/o. S.Boopathi, female was directed to be released on Bail order of this Court dated 08.06.2016 and made in Crl MP(MD)No.4380 of 2016 in CRL RC (MD)No.345 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)No.345 of 2016

B.Poongothai .. Revision Petitioner/ Accused

Vs.

K.Karuppusamy .. Respondent/Complainant

Prayer : This Criminal Revision petition is filed under Section 401 of Cr.P.C., to call for the records and set aside the Judgment of conviction and sentence imposed upon the revision petitioner/accused by the Judicial Magistrate No.2, Kulithalai in Calender Case No.114 of 2005 dated 11.09.2014 and modified by the Mahalir Neethi Mandram(Fast Track Mahila Court, Karur, in Criminal Appeal No.40 of 2014 dated 09.02.2016 and acquit the revision petitioner/accused giving benefit of doubt.

For Petitioner : Mr.K.Suresh

For Respondent : Mr.N.Shanmuga Selvam

ORDER

Heard the learned counsel on either side.

2. The petitioner herein was prosecuted for the offence under Section 138 of the Negotiable Instruments Act in C.C. No.114 of 2005 on the file of the Judicial Magistrate No.II, Kulithalai.

3. The case ended in conviction and sentence. Challenging the same, the petitioner filed C.A.No.40 of 2014 before the Sessions Judge, Mahila Fast Track Court, Karur. The learned appellate Judge vide Judgment dated 09.02.2016 confirmed the conviction and modified and reduced the sentence. Challenging the same, this criminal revision case came to be filed.



4. The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgments and acquit the revision petitioner and allow this revision case.

5. Per contra the learned counsel appearing for the complainant submitted that the impugned Judgment do not call for any interference.

6. I carefully considered the rival contentions and also went through the evidence on record.

7. The case of the complainant is that the accused/revision petitioner borrowed a sum of Rs.3,00,000/- from him on 06.12.2003. She issued complaint cheque Ex.P.1 bearing No.009728 dated 10.01.2005 drawn on Bank of India, Coimbatore for a sum of Rs.3,00,000/- favouring the complainant towards partial discharge of her liability. The complainant presented the same for collection on 18.01.2013. It was returned unpaid on 20.01.2005 for the reason of insufficiency of funds in the account maintained by the accused. The complainant issued Ex.P.4 notice dated 12.02.2005. The same was received by the accused on 14.02.2005. The accused did not respond, nor did she comply with the demand set out in the notice. Therefore, the complainant filed C.C.No.114 of 2005 before the jurisdictional Court. The complainant had examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. The accused examined himself as D.W.1 and one Rajendran was examined as D.W.2 and one Gunasekaran was examined as D.W.3. Ex.D.1 to Ex.D.4 were marked during the trial.

8. The learned counsel appearing for the complainant would contend that the signature appearing in the cheque is not in dispute. It is true that the complainant had admitted that promissory note was executed by the accused at the time of availing loan and that the same was not marked. The learned counsel would point out that in the complaint itself, it had been stated that when issuing the complaint cheque Ex.P.1, the accused had taken back the original promissory note. The learned counsel would submit that this provides adequate explanation for non-marking of the promissory note. He would also point out that the accused failed to send any reply notice, after receiving Ex.P.4 notice. He wanted this Court to reject the defence version that the accused had dealing only with one Rajedran and Ex.P.1 cheque was given to him as security and he had misused the same. The learned counsel would state that the defence projected by the accused had been considered carefully by the Courts below and negatived. He pointed out that this Court is now exercising revisional jurisdiction and that therefore this Court cannot interfere with the findings of the guilt imposed by the Courts below.

9. I am not persuaded by the objections raised by the learned counsel appearing for the complainant. As rightly pointed out by the learned counsel appearing for the accused, a careful perusal of the

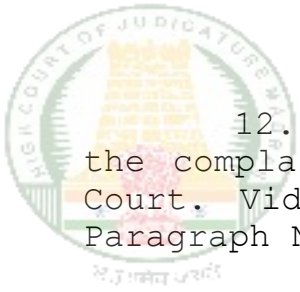


deposition of the complainant who examined himself as P.W.1 cannot inspire the confidence of the Court. The revision petitioner is a resident of Coimbatore. The complainant is a permanent resident of Chinnamanaickenpatti, in Karur District. The accused had specifically taken the stand that she was not having any transaction with the complainant. In the cross examination of P.W.1, the complainant admitted that he had not visited the house of the accused before the loan transaction. He admitted that he had visited the house of the accused for the first time only in October 2004. But he claims that he had given a sum of Rs.3,00,000/- as loan on 06.12.2003. The complainant also admitted that the accused Poongothai was not introduced to him by anybody else. Though he claims that the promissory note was executed by Poongothai, the same had not been marked. To a specific question as to whether he has taken any photocopy of the promissory note, he answered in the negative. Interestingly, Ex.P.6 has been marked as if it is a photocopy of the original promissory note. The complainant claims that he is an Income Tax assessee and that he has been filing the Income Tax returns. To a specific question as to whether the transaction has been reflected in the returns, he admitted that the transaction in question had not been reflected in his statement of accounts nor in the Income Tax returns. The complainant is said to be doing agriculture in 3 acres. He is also running a fertiliser shop and STD booth. A sum of Rs.3,00,000/- is certainly a substantial amount. He claims to have advanced the said amount to the accused even without taking any security.

10. The revision petitioner had taken a specific defence that she had dealings only with one Rajendran and that the said Rajendran had taken as many as five cheques, bearing Nos.009726 to 009730 from her and also promissory notes. By utilizing the promissory notes, he filed a civil suit in his name and in the names of the family members and obtained decree also. Through his friends, he instituted as many as five criminal prosecutions under Section 138 of the Negotiable Instruments Act. The other remaining four transactions had ended acquittal only. But in the case on hand alone, the revision petitioner had suffered conviction.

11. The following details are apparent from the record:-

Cheque No.	Case No.	Name of the Court
009726	C.C.No.1006 of 2004	Judicial Magistrate No.I, Karur.
009727	C.C.No.65 of 2005	Judicial Magistrate No.I, Karur.
009728	C.C.No.114 of 2005	Judicial Magistrate No.II, Kulithalai.
009729	S.T.C.No.523 of 2005	Judicial Magistrate, Dharapuram
009730	S.T.C.No.414 of 2009	Judicial Magistrate, Namakkal.



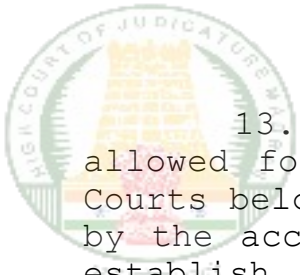
12. Challenging the acquittal made in C.C.No.1006 of 2004, the complainant therein filed Crl.A.(MD)No.310 of 2010 before this Court. Vide Judgment dated 23.07.2019, the appeal was dismissed. Paragraph Nos.5 to 7 of the said Judgment read as follows:-

WEB COPY

" 5.According to the complainant's counsel, the accused failed to discharge the burden cast on him. I am unable to agree with the submission of the appellant's counsel. This Court must note that the accused apart from cross examining the complainant, got into the witness box and marked as many as 12 documents. Ex.D8 is the complaint copy in C.C.No.65 of 2005 on the file of the Judicial Magistrate No.1, Karur. It was filed by one Ramasamy against the respondent herein. The cheque number therein was 009727, dated 04.10.2004 drawn on Bank of India, Coimbatore for a sum of Rs.3,00,000/- The cheque number in this case is 009728. Ex.D11 is the copy of the complaint filed in C.C.No.523 of 2005 on the file of the Judicial Magistrate, Tharapuram against the respondent herein. The subject matter of the said complaint was cheque number bearing 009730 drawn on Bank of India, Coimbatore.

6.The learned counsel appearing for the respondent would submit that Rajendhiran filed as many as five complaints against the accused/respondent herein through his friends before five different Courts.

7.This Court went through the cross examination of P.W.1, P.W.1 is based in Karur. The accused is based in Coimbatore. When the accused wanted money, the complainant would claim that he gave a sum of Rs.3,00,000/- on the strength of Ex.P1 pro note. The complainant had not taken any security from the accused. The complainant had not stated as to how the accused was known to him. A hand loan was given by way of cash is the claim of the complainant. The testimony of the complainant does not inspire the confidence of this Court. More than anything else, the fact that the successive cheques form the subject matter of five different complaints is a clear give away that Thiru.Rajendhiran who, with whom the accused had transaction, had misused the cheques given to him as security through his friends. The Appellate Court, after a careful consideration of the evidence on record, chose to acquit the accused/respondent herein. This is an appeal against acquittal. In this case, the accused had rebutted the presumption drawn against her under Section 139 of the Negotiable Instruments Act. I find no ground to interfere. There is no merit in this case. The Judgment of the Court below is confirmed. This criminal appeal stands dismissed. "



13. I am of the view that this revision case will have to be allowed for the very same reasons set out in the said order. The Courts below ought to have seen as to whether the evidence projected by the accused is probable. It is only the complainant who has to establish his case beyond reasonable doubt. The accused has to establish the defence only by preponderance of probability. The Courts below ought to have seen that five successive cheques have been used for launching five prosecutions in different Courts. Of course there is some merit in the contention of the complainant's counsel that this Court should take note of the failure on the part of the accused in not responding to the statutory notice. On that sole ground, her evidence cannot be foreclosed. When the accused and the complainant were not acquainted with each other earlier, the claim of the complainant that he advanced a sum of Rs.3,00,000/- to the accused even without taking any security stretches my credulity. Non-reflections of the transaction in the statements of accounts and in the Income Tax returns, ought to have been taken note of. The accused had discharged her burden by examining Rajendran and marking as Ex.D.2 through him. Of course in Ex.D.2, the proof of the particulars regarding Ex.D.1 are not present. But during the course of trial, all the materials have been placed before the Court for appreciation. The Courts below have not carefully tested the defence projected by the accused.

14. In this view of the matter, the impugned Judgment in this criminal revision is set aside. The petitioner is acquitted. This criminal revision case is allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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 Mahalir Neethi Mandram
(Fast Track Mahila Court),
Karur.

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



2. The Judicial Magistrate No.II,
Kulithalai.

3. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Suresh, Advocate Sr.No. 26371

Crl. R.C. (MD) No.345 of 2016
16.12.2020

VB (05.01.2021) 6P 6C