



BAIL SLIP

S.Nagalakshmi, W/o.Subramani, aged about 40/2016, sole Accused was released on bail by order dated 13.06.2016 in CRL MP(MD) No.4553 of 2016 in CRL RC(MD)NO.368 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.368 of 2016

and

Crl.M.P. (MD)No.4554 of 2016

S.Nagalakshmi

... Petitioner/Appellant/Accused

Vs.

C.K.Sekar

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the Judgment of conviction imposed by the Judgment dated 13.07.2015 made in C.C.No.200 of 2011 on the file of the Judicial Magistrate, Nilakottai, sentencing the petitioner to undergo simple imprisonment for one year and directed the petitioner to pay a compensation of Rs.2,00,000/- to the respondent equivalent to the cheque amount and as confirmed by the Judgment dated 11.01.2016 in C.A.No.29 of 2015 on the file of the Principal Sessions Judge, Dindigul, set aside the same and allow this criminal revision case.

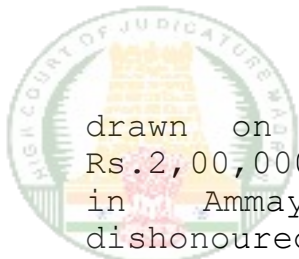
For Petitioner	: Mr.M.R.Srinivasan
	Legal Aid Counsel
For Respondent	: Mr.N.Sathish Babu

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

2.The respondent herein namely Thiru.C.K.Sekar filed C.C.No.200 of 2011 on the file of the Judicial Magistrate, Nilakotai against the revision petitioner S.Nagalakshmi under Section 138 of the Negotiable Instruments Act.

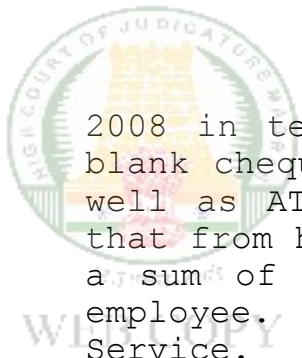
3.The case of the complainant is that he knew the accused for a long time. While so, on 05.06.2011, the accused approached the complainant and asked for hand loan to the tune of Rs.2,00,000/- for her urgent expenses. The accused is said to have assured the complainant that she would return the amount within one month. The accused is said to have met the complainant on 05.07.2011 at his residence and issued the complaint cheque Ex.P1 bearing No.338206



drawn on ICICI bank favouring the complainant for a sum of Rs.2,00,000/-. The complainant presented the cheque on 07.07.2011 in Ammayanaickenur Branch. But then, the same was returned dishonoured on 18.07.2011 for the reason of 'insufficiency of funds' in the savings bank account No.605801509899 maintained by the accused. The complainant issued Ex.P5 notice dated 27.07.2011 and the accused received the same on 02.08.2011. The accused does not appear to have given any reply notice nor she did comply with the demand set out in the notice. Therefore, the private complaint came to be filed against the revision petitioner and the Court below took cognizance of the offence and issued summons to the revision petitioner. Since the revision petitioner denied her charge, the case was taken up for trial. The complainant examined himself as P.W.1 and his banker as P.W.2. The Branch Manager of ICICI Bank was examined as P.W.3. Ex.P1 to Ex.P6 were marked. The accused examined herself as D.W.1. The mother of the accused was examined as D.W.2. The Court below after consideration of the evidence on record, by Judgment dated 13.07.2015, found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced her to undergo one year simple imprisonment and also directed her to pay the cheque amount of Rs.2,00,000/- as compensation. The accused filed C.A.No.29 of 2015 before the Principal Sessions Court. The Sessions Court, by Judgment dated 11.01.2016, confirmed the Judgment of the trial Court and dismissed the appeal. Challenging the same, this revision case came to be filed.

4.The learned counsel appearing for the complainant pointed out that signature in Ex.P1 cheque is not in dispute and in view of the evidence adduced by the complainant, the presumption under Section 139 of the Negotiable Instruments Act got attracted. The learned counsel for the complainant pointed out that the accused did not even bother to issue any reply notice. Except examining herself and her mother as witnesses, no evidence has been placed for rebutting the presumption under Section 139 of the Negotiable Instruments Act. She further pointed out that this Court is after all exercising revisional jurisdiction and that, therefore, the concurrent findings of the guilt rendered by the Courts below ought not to be interfered with as they have not been shown to be perverse or suffering from any material irregularity. She also pointed out that the accused had come out with several false defences.

5.Though the contentions urged by the learned counsel for the complainant are immensely persuasive, I am of the view that this Court cannot straightaway confirm the Judgments impugned in this criminal revision case. This is primarily for the reason that the revision petitioner was represented only by legal aid counsel before the trial Court as well as before this Court. It is seen from a perusal of the testimony of the accused that her defence is that she had borrowed a sum of Rs.50,000 from the complainant in the year



2008 in ten instalments and that the accused had taken a signed blank cheque from her. She would also claim that her pass book as well as ATM card were taken by the accused. She further claimed that from her account, the complainant used to periodically withdraw a sum of Rs.5,000/-. The accused is working as an Anganvadi employee. It is virtually a last grade post in the Government Service. Since I felt that the issue could be settled between the parties, the learned counsel appearing for the accused / revision petitioner with great difficulty was able to secure her presence before this Court through web hearing. The accused stated that she is hardly getting Rs.10,000/- per month and that she has a girl child to take care. Her husband appears to be an alcoholic and he is in hospital due to COVID infection. Her mother is also in hospital due to COVID infection. She expressed several difficulties. She however reiterated whatever was deposed by her as D.W.1.

6. Since no amicable resolution could be arrived at, I took up the matter for disposal on merits. I noted that the complainant was not effectively cross examined on the aspects projected by the accused. The stand of the accused is that the savings bank account was opened sometime in 2008 and that the cheque book in question was also issued at that time. Her defence is that she had given a signed blank cheque in the year 2008 and that the same was filled up and presented in the year 2011. If that be so, the question ought to have been put to P.W.3 as to when the cheque leaf in question was issued. The stand of the accused is that the complainant had withdrawn a sum of Rs.5,000/- by utilising her ATM card. Of-course, for withdrawing cash through ATM card, one needs to know only "PIN" number. But from the regularity of transaction and usage of the ATM card, the Court can infer if it was exclusively used by the accused or the complainant. It is seen that the legal aid counsel appointed by the Court to defend the accused did not take the steps necessary to establish her defence. Such steps ought to have been taken. If these two aspects turn out to be true, namely issuance of the cheque by her banker in the year 2008 and withdrawal of a sum of Rs.5,000/- each through ATM card of the accused in the year 2008, then, they may go a long way in probabilising the defence of the accused.

7. In normal circumstances, this Court will not give a fresh opportunity to the accused. This is a private complaint and it is entirely for the accused to make good the defence. But then, I cannot lose sight of the fact that the accused is represented only by a legal aid counsel even before this Court. The cases, in which, the accused are defended by legal aid counsel will have to be scrutinized with greater care by the revisional Court. This Court is obliged to verify if the case of the accused was effectively put forth. Right to fair trial is a guaranteed fundamental right enshrined in Article 21 of the Constitution of India. When the accused is defended through legal aid counsel, this Court has to carefully see if this right has been upheld or not. An accused



having little or no means is provided with counsel at State expense. But the court must ensure that the counsel so provided is competent. Right to legal aid means right to effective legal assistance. Any professional service must meet and fulfil certain basic standards.

8.All that I am noting is that the defence brought out in the testimony of the defence witnesses namely D.W.1 and D.W.2 could have been established by taking out an application for finding out, if there has been monthly withdrawal of a sum of Rs.5,000/- each through ATM card of the accused. I also note that the cross-examination of P.W.1 was not strong or effective. If the accused was not properly defended, then, it is a ground to interfere. On this ground, I will not be justified in quashing the case. All that I can do is to remand the matter to the file of the Trial Court to enable the accused to recall P.W.1 and also to file appropriate application for establishing her defence.

9.I have no hesitation to come to the conclusion that the accused has not been effectively defended by the legal aid counsel. In this view of the matter, the Judgments impugned are set aside. The matter is remanded to the file of the trial Court. The evidence already taken will very much remain on record. The accused is only given one more opportunity to recall P.W.1 and also to file appropriate application to make good her defence.

10. The learned trial Magistrate will thereafter hear arguments on either side and pass Judgment in accordance with law. I make it clear that this Judgment will not be construed as casting any doubt on the case of the complainant. The remand has been necessitated only for the reason that the accused was not effectively defended by legal aid counsel. The Trial Magistrate will conclude the entire exercise within a period of four months from the date of a receipt of a copy of this order. Registry shall transmit the record to the trial Magistrate forthwith and without any delay. I make it clear that the observations now made in this order ought not to be construed as casting aspersion on the competence of the counsel who represented the accused.

11.The Criminal Revision Case is allowed on these terms. Consequently, connected miscellaneous petition is closed.

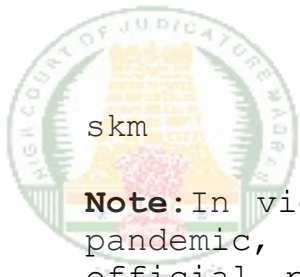
Sd/-

Assistant Registrar(Records)

// True Copy //

/ /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 Judicial Magistrate, Nilakottai, Dindigul District.
- 2.Do through The Chief Judicial Magistrate, Dindigul.
- 3.The Principal Sessions Judge, Dindigul.

+1 CC to Mr.M.R.SREENIVASAN, Advocate SR.No. 25025

Cr1.R.C (MD) No.368 of 2016
09.12.2020

PK(CO)
TR(09.02.2021) 5P 5C