



**Bail Slip**

G.Perumal (M/59/2015), S/o.K.Govindan, (Sole Accused), was released on bail vide Court order dated 14.06.2016 made in CrI.MP (MD)No.4625/2016 in CrI.RC (MD)No.381/2016.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 02.12.2020**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**CrI.R.C. (MD)No.381 of 2016**

G.Perumal : Petitioner/Appellant/Sole Accused

Vs.

S.Kumar : Respondent/Respondent/Complainant

**Prayer:** Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and allow the revision and set aside the conviction and sentence dated 16.02.2016, made in C.A.No.50 of 2015 on the file of the Mahila Fast Track Court, Karur, by confirming judgment dated 04.08.2015 made in STC.No.869 of 2011 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Karur.

For Petitioner : Mr.S.Vijaya Kumar  
For Respondent : Mr.R.Niresh Kumar

**O R D E R**

Heard the learned counsel on either side.

2.S.Kumar filed S.T.C.No.869 of 2011 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level), Karur, for the offence under Section 138 of Negotiable Instrument Act against the revision petitioner herein.

3.The case of the complainant is that the accused borrowed a sum of Rs.9,50,000/- on 11.09.2011 and towards discharge of the said liability, the accused issued Ex.P.1/cheque. The same was presented for collection on the same date. It was returned for the reason of "insufficiency of fund" in the account of the accused. The complainant issued Ex.P3/legal notice dated 01.11.2011. The same was received by the accused vide Ex.P4. But then, no reply was sent nor the demands set out in the legal notice complied with. Therefore, the said private complaint came to be instituted.



4.The complainant examined himself as P.W.1 and also two other witnesses. He marked Exs.P1 to P5. The accused examined one Ravichandran as D.W.1 and marked a copy of the bank statement.

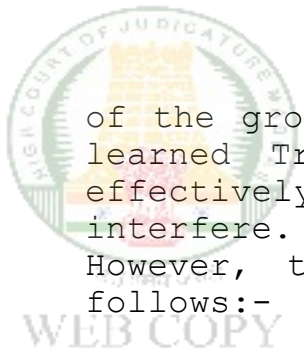
5.The learned Trial Magistrate noted that complainant by examining himself and two other witnesses had placed *prima facie* materials to draw the presumption under Section 139 of Negotiable Instrument Act. It was also noted that even in the cross examination, the accused did not deny the issuance of the cheque to the complainant. The signature found in the cheque is also admitted. Therefore, it was for the accused to rebut the presumption raised against him. It has been observed that no explanation has been given by the accused as to how the instrument fell into the hands of the complainant. Since the presumption was not at all rebutted, it was held that the case was established by the complainant beyond reasonable doubt.

6.Of course, the stand of the accused was that the complainant did not have the means to advance such a huge amount of Rs.9,50,000/-. In fact, it was for that reason, D.W.1/Bank Manager was examined and through him the statement of bank account of the complainant was marked. But then, it has been noted by the learned Trial Magistrate that according to the complainant, he was real estate agent for more than ten years and that he is owning seven acres of agricultural land and that his annual agricultural income was not less than Rs.6,00,000/-. It was further noted that this stand of the complainant could not be shaken by the accused. As regards, the defence exhibits pertaining the complainant's savings bank account, the Court below had given a finding that it was not the case of the complainant that he had withdrawn the amount in question from his bank account and lent the same to the accused. According to the complainant, it was cash in hand kept by him for his real estate business, which was advanced to the accused. This version of the complainant was believed by the Court below and the said finding was also confirmed by the Appellate Court.

7.I am of the view that exercising my revisional jurisdiction, no ground has been made out for interfering with the same. The learned Trial Magistrate vide judgment dated 04.08.2015 found the accused guilty of the offence under Section 138 of Negotiable Instrument Act and sentenced him to undergo simple imprisonment for one year. The accused was also fined with a sum of Rs.2,500/-. Default sentence was also imposed.

8.The accused filed C.A.No.50 of 2015 before the Mahila Fast Track Court, Karur. The Appellate Court reduced the substantive imprisonment from one year to three months simple imprisonment. Questioning the same, this criminal revision case has been filed.

9.Though the learned counsel appearing for the revision  
<https://hcservices.courts.gov.in/hcservices/> incorporated all the contentions set out in the memorandum



of the grounds, I am of the view that the reasons assigned by the learned Trial Magistrate and confirmed by the Appellate Court effectively answer all these contentions. I find no ground to interfere. The conviction imposed on the petitioner is confirmed. However, the sentence imposed on the petitioner is modified as follows:-

(i) The accused is directed to deposit the cheque amount of Rs.9,50,000/- (Rupees Nine Lakhs and Fifty Thousand Only) to the credit of S.T.C.No.869 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Karur, within a period of sixteen 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 fails to deposit the cheque amount within the period stipulated above, the sentence imposed by the Sessions Court will be restored automatically.

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

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

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.

To:

1. The Sessions Judge, Mahila Fast Track Court,  
Karur.

2.- do through -  
The Principal Sessions Judge, Karur.

3. The Judicial Magistrate,  
Fast Track Court at Magisterial Level,



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

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+1 CC to Mr.S.VIJAYAKUMAR, Advocate SR-24001.

**Crl.R.C. (MD) No.381 of 2016**  
**02.12.2020**

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