BAIL SLIP IN Crl.R.C.(MD)No.382 of 2016

The petitioner/Appellant/Accused No.2 namely M.Thangavel, S/o. P.Murugesan was released on bail by this Hon'ble Court made in CRL MP(MD).4627 of 2016 in CRL RC(MD).382 of 2016 dated 14.06.2016.

BAIL SLIP IN Crl.R.C.(MD)No.383 of 2016

The petitioner/Appellant/Accused No.3 & 4 namely P.Murugesan, S/o.Palaniappan Mudaliar, and M.Ravi, S/o.P.Murugesan, were released on bail by this Hon'ble Court made in CRL MP(MD).4629 of 2016 in CRL RC(MD).383 of 2016 dated 14.06.2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)Nos.382 & 383 of 2016

Crl.R.C.(MD)No.382 of 2016

1. M/s.Aharam Export Fabrics,
   A Registered Partnership Firm,
   No.447/1-A, Salem Main Road,
   Vengamedu, Karur - 639 006.
   Represented by its partner
   M.Thangavel

2. M.Thangavel .. Petitioner/Appellant/Accused 1 & 2

Vs.

S.Viswanathan .. Respondent/Respondent/Complainant

Prayer : This Criminal Revision petition is filed under Sections 397 r/w. 401 of Cr.P.C., to allow the revision and set aside the conviction and sentence dated 18.02.2016 made in C.A.No.61 of 2015 on the file of the learned Mahila Fast Track Court, Karur, by confirming the Judgment dated 28.04.2015 made in S.T.C.No.436 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur.

Crl. R.C.(MD)No.383 of 2016

1. P.Murugesan
2. M.Ravi .. Petitioner/Appellant/Accused 3 & 4

Vs.

S.Viswanathan .. Respondent/Respondent/Complainant

Prayer : This Criminal Revision petition is filed under Sections 397 r/w. 401 of Cr.P.C., to allow the revision and set aside the conviction and sentence dated 18.02.2016 made in C.A.No.59 of 2015 on the file of the learned Mahila Fast Track Court, Karur, by confirming the Judgment dated 28.04.2015 made in S.T.C.No.436 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur.

(in both Crl.R.Cs.)
For Petitioners : Mr.S.Vijaya Kumar
For Respondent : Mr.D.Ramesh Kumar

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COMMON ORDER

These two criminal revisions arise out of the very same case. S.Viswanathan is the complainant in S.T.C.No.436 of 2011 on the file of the Judicial Magistrate/Fast Track Court at Magisterial Level, Karur.

2. S.T.C.No.436 of 2011 was instituted for the offences under Sections 138 r/w. 142 of the Negotiable Instruments Act, against M/s.Aharam Export Fabrics and its partners. The case of the complainant is that the accused firm run by its partners borrowed a sum of Rs.3,00,000/- from the complainant on 15.02.2011 and towards repayment of the said amount issued complaint cheque Ex.P.2 dated 22.02.2011. The complaint cheque on being presented for collection was returned unpaid and dishonoured for the reason “account closed”. Thereupon, the complainant issued Ex.P.4 legal notice dated 20.06.2011. The same was addressed to the accused firm. The notices were also sent to its partners. Though the notices issued to accused Nos.2 and 5 were served, notice issued to accused No.1,3 and 4 was returned unserved. The accused did not give any reply also. Thereafter, the complainant instituted the instant private complaint. The complainant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.9. On the side of the accused, accused No.2 Thangavel, the signatory of the cheque of the accused firm was examined as D.W.1. Ex.D.1 to Ex.D.3 were also marked.

3. The learned trial Magistrate by Judgment dated 28.04.2015 gave a finding that the accused are guilty of the offence under Section 138 of the Negotiable Instruments Act. They were also sentenced by the Court below as follows:-

Accused	Offence u/s.	Punishment
A-1	138 of NI Act	To pay a fine of Rs.1,500/- and in default, A-2 to undergo 15 days S.I.
A-2	138 of NI Act	To undergo 5 months Simple Imprisonment and to pay a fine of Rs.1,500/- in default, to undergo 15 days S.I.
A-3	138 of NI Act	To undergo 5 months Simple Imprisonment and to pay a fine of Rs.1,500/- in default, to undergo 15 days S.I.
A-4	138 of NI Act	To undergo 5 months Simple Imprisonment and to pay a fine of Rs.1,500/- in default, to undergo 15 days S.I.
A-5	138 of NI Act	To undergo 5 months Simple Imprisonment and to pay a fine of Rs.1,500/- in default, to undergo 15 days S.I.

Aggrieved by the same, accused No.1 and 2 filed C.A.No.61 of 2015 before the Mahila Fast Track Court, Karur. Accused No.5 did not prefer any appeal. Accused No.3 Murugesan and accused No.4 Ravi filed C.A.No59 of 2015 before the Mahila Fast Track Court, Karur. Both the appeals were partly allowed and that there was a modification in the matter of sentence alone. Challenging the same, accused Nos.1 and 2 filed Crl.R.C.(MD)No.382 of 2016, while accused Nos.3 and 4 filed Crl.R.C.(MD)No.383 of 2016. It appears that accused No.5 did not file any appeal at all. Therefore, the question of filing any revision does not arise.

4. Heard both the revision petitioners' cases together. They arise out of common cause of action.

5. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds. He also pointed out that accused Nos.3 and 4 are entitled to be acquitted. He placed reliance on the decision of the Hon'ble Supreme Court reported in (2005) 8 SCC 89 (S.M.S. Pharmaceuticals Ltd Vs Neeta Bhalla). Relying on the said decision, the learned counsel contended that the complainant has not established that accused Nos.3 and 4 were in-charge of the affairs of the firm and also responsible for its day-to-day conduct of its business. He also pointed out that both accused Nos.3 and 4 had quit the firm long before the cause of action arose.

6. I am not persuaded by the contentions advanced by the learned counsel appearing for the petitioners. As rightly pointed out by the learned counsel appearing for the complainant, the firm in question, namely, M/s.Aharam Export Fabrics was a registered partnership firm. In fact the complainant had marked Ex.P.1 Form-A. Accused Nos.2 to 5 have been shown as partners. If the defence of accused Nos.3 and 4 is to be accepted, then they must have placed sufficient evidence in this regard. There is nothing on record to show that accused Nos.3 and 4 had issued any notice to the registrar of the firm indicating their retirement from the firm. The procedure set out in the Partnership Act regarding retirement of partners from the registered firm was not shown to have been followed. Therefore, I have no hesitation to reject the contention advanced by accused Nos.3 and 4. In any event, accused No.3 Murugesan is said to be no more. Even though no death certificate has been produced by the learned counsel, I accept the submission made by the learned counsel appearing for the revision petitioners in Crl.R.C.(MD)No.383 of 2016.

7. The signature attributed to Thangavel that appeared on the complaint cheque is not in dispute. The cheque itself was issued only on behalf of the firm.

8. Accused No.5, one of the partners of the firm has not chosen to challenge the findings of the Court below. That apart, the complainant clearly contained the basic averments that are necessary to be set out for fastening the liability on the partners in their vicarious capacity.

9. The learned counsel appearing for the complainant relied on the decision of the Hon'ble Supreme Court reported in (2013) 16 SCC 630 (A.K.Singhania V. Gujarat State Fertilizer Co. Ltd.,). The Hon'ble Supreme Court in the said decision held as follows:-

> "14. From a plain reading of the aforesaid provision it is evident that every person who at the time the offence was committed was in charge of and responsible to the company shall be deemed to be guilty of the offence under Section 138 of the Act. In the face of it, will it be necessary to specifically state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company? In our opinion, in the case of offence by the company, to bring its Directors within the mischief of Section 138 of the Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is a necessary ingredient which would be sufficient to proceed against such Directors. However, we may add that as

no particular form is prescribed, it may not be necessary to reproduce the words of the section. If reading of the complaint shows and the substance of accusation discloses necessary averments, that would be sufficient to proceed against such of the Directors and no particular form is necessary. However, it may not be necessary to allege and prove that, in fact, such of the Directors have any specific role in respect of the transaction leading to issuance of cheque. Section 141 of the Act makes the Directors in charge of and responsible to the company "for the conduct of the business of the company" within the mischief of Section 138 of the Act and not particular business for which the cheque was issued. We cannot read more than what has been mandated in Section 141 of the Act."

10. The said decision applies to the case on hand squarely. Since the complainant had made out a *prima facie* case, the presumption under Section 139 of the Negotiable Instruments Act also automatically comes in. The accused have not however rebutted the presumption raised against them. Therefore, the finding of guilt arrived at by the Courts below does not warrant any interference. As rightly pointed out by the learned counsel appearing for the complainant, I am exercising only revisional jurisdiction and that unless the findings of the Court below are vitiated by perversity or material irregularity, I cannot interfere.

11. The contentions urged by the learned counsel appearing for the petitioners do not persuade me to come to the conclusion that the findings of the Courts below are vitiated by perversity or material irregularity. Therefore, I confirm the finding of guilt and the conviction ordered by the Courts below. However, taking note of the various other circumstances, I am of the view that the revision petitioners can be given one more opportunity. Therefore, the sentence of imprisonment imposed on the revision petitioners is modified as follows:-

i) The revision petitioners are directed to deposit the cheque amount of Rs.3,00,000/-(Rupees Three Lakhs only) to the credit of S.T.C.No.436 of 2011 on the file of the Judicial Magistrate, Fast Track Court At Magisterial Level, Karur, 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.

iii) If the revision petitioners fail to deposit the cheque amount within the time stipulated above, the sentence imposed on the revision petitioners by the Court below will be automatically restored.

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

12. If the revision petitioners deposits the cheque amount in question, the benefit of this order will also enure in favour of the non-petitioning accused No.5 also. These criminal revision cases are partly allowed.

Sd/-

Assistant Registrar(CS-I)

// 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 Sessions Judge,
   Mahila Fast Track Court, Karur.

2. The Principal Sessions Judge, Karur.

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

4. The Chief Judicial Magistrate, Karur.

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

+2 CC to M/s.S.VIJAYA KUMAR, Advocate (SR-23473 & 23474[F] dated 01/12/2020)

<u>Crl.R.C.(MD)Nos.382 & 383 of 2016</u>
<u>30.11.2020</u>

MR(CO)
TR(16.12.2020) 6P 9C