BAIL SLIP

The Revisioner Petitioner/Petitioner namely S.Rajeswari W/o.R.Sathasivam was released on bail by this Hon'ble Court made in Crl MP(MD)No.4600 of 2016 in Crl RC(MD)No.386 of 2016 order dated 15/06/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)No.386 of 2016

S.Rajeswari :Petitioner/Appellant/Accused

Vs.

V.Ponnusamy :Respondent/Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records pertaining to the judgment dated 09.03.2016 made in C.A.No.27 of 2014, on the file of the Fast Track Mahila Court, Sessions Court, Karur convicting the petitioner to undergo 6 months simple imprisonment and shall pay fine of Rs.5,000/- and in default simple imprisonment for 30 days for the offence punishable under Section 138 of Negotiable Instruments Act confirming the judgment dated 03.07.2014 made in S.T.C.No.760 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur and to set aside the same and consequently, acquit the petitioner.

For Petitioner : Mr.P.Arun Jayatram

For Respondent : Mr.S.Karthik

<u>O R D E R</u>

Heard the learned counsel on either side.

2.The respondent filed S.T.C.No.760 of 2011 on the file of the learned Judicial Magistrate/Fast Track Court Magisterial level, Karur against the petitioner herein for the offence under Section 138 of Negotiable Instruments Act.

3.The learned trial Magistrate by judgment dated 03.07.2014 found the petitioner guilty of the said offence and sentenced him to undergo simple imprisonment for a period of six months and also pay a fine of Rs.5,000/-, default sentence was also imposed. Questioning the same, the petitioner filed C.A.No.27 of 2014, before the Mahalir Fast Track Court/Sessions Judge, Karur. By judgment dated 09.03.2016, the Appellate Court confirmed the conviction and sentence imposed by the trial Court. Challenging the same, this Criminal Revision came to be filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of the grounds.

5.The case of the complainant is that the accused is the family friend of the complainant and that in first week of March 2011, she approached him for seeking loan to the tune of Rs.9 lakhs and that the complainant gave the said loan amount after receiving post dated cheque from the accused. The complaint cheque was presented for collection on 18.04.2011 before the Corporation Bank Limited, Karur Branch. The cheque was returned unpaid for the reason of 'insufficient funds' in the account of the accused. Thereupon, the complainant issued legal notice dated 29.04.2011, calling upon the accused to pay the cheque amount. The accused received the notice and issued reply. Since the demand set out in the legal notice was not complied with, the private complaint came to be laid.

6.The learned counsel appearing for the petitioner primarily contended that the accused was a mere house wife and there was no need or necessity for such huge borrowal. He further contented that the complainant had not obtained any security or even a promissory note from the accused. Therefore, he wanted this Court to disbelieve the version of the complainant of having given loan for such a huge sum.

7.The learned counsel placed strong reliance on the decision rendered by a learned Judge of this Court in Crl.A.(MD)No.586 of 2019, dated 23.01.2009. This Court had declined to interfere with the decision of the trial Court. While rendering the said decision, this Court relied upon the decision of the Honourable Supreme Court reported in AIR 2008 Supreme Court 278 [John k.John vs. Tom Varghese & another], wherein the Honourable Apex Court had held as follows:

> *"The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the Court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent even was not in a position to discharge his burden to pay instalments in respect of the prized amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. If in a situation of this nature, the High Court has arrived at a finding that the respondent has discharged his burden of proof cast on him under Section 139 of the Act, no exception thereto can be taken."*

8.The learned counsel appearing for the revision petitioner would contend that the ratio laid down by the Honourable Supreme Court would squarely be applicable by the facts of this Case.

9.I am not persuaded by the aforesaid submission of the learned counsel appearing for the petitioner. As rightly pointed out by the learned counsel appearing for the complainant, the accused has not explained or established as to how Ex.P.1/compliant cheque came to the possession of the complainant. The complainant had come out with the case that the accused borrowed a sum of Rs.9 lakhs and issued the post-dated complaint cheque.

10.The signature found in Ex.P.1, attributed to the accused has not been denied. Thus the presumption under Section 139 of Negotiable Instruments Act got triggered against the accused. This is of course a rebuttable presumption. It is for the accused to rebut by preponderance of probabilities. The accused did not enter the witness box. The Bank Manager was examined as defence side witness as D.W.1. As rightly found by the trial Court, the defence has not probabilized its version. Hence, the presumption in favour of the complainant stood unrebutted.

11. I also do not find merit in the contention of the learned counsel for the accused that no one would advance such huge sum, without any security. There is no rule of law that only on the strength of security, the loan amount has to be advanced to the borrower.

12. Of course depending on the circumstances of the case, the Courts below while definitely taking note of the conduct of the parities find if the version of the parties is believable or not. Therefore, the case law relied on by the petitioner's counsel is not applicable to the facts of this Case. While the complainant was being examined as a witness, the complainant had clearly stated that the cheque in question was given to him, at the time of advancement of loan amount. The complainant's case is that based on the post dated cheque issued by the accused, he gave the loan amount. This is definitely a believable version. The complainant has chosen to consider Ex.P.1/cheque as security and based on the same, he gave the loan amount.

13. More than anything else, I am exercising revisional jurisdiction. The learned trial Magistrate as well as the Appellate Court have concurrently found that the accused is guilty of the offence under Section 138 of Negotiable Instruments Act. Both the Courts below have clearly found that the accused has not rebutted the presumption raised against her under Section 139 of the Negotiable Instruments Act.

14.The contentions urged by the accused do not persuade me to hold that the findings arrived at by the Courts below are vitiated by material irregularity. I have no hesitation to come to the conclusion that the complaint cheque belongs to the accused. The learned trial Magistrate had held as follows:

> *"13.The defence side had further marked the bank statement of accounts pertaining to the Maxcop textile firm and the accused. The Bank Manager has deposed regarding to the Current Account in the name of the Maxcop Partnership Firm and S.B. Account in the name of the accused Rajeswari. The perusal of the evidence of D.W.1 and the said documents reveals that there is no vital defence for the accused. The statement of accounts would only show the routine transactions. It is only for the accused to explain and establish as to how the instrument Ex-P1 fell into the hands of the complainant. The defence has contended that the cheques in series has been exhausted even in the year of 2001 and it shows that the disputed cheque was also issued in the equivalent period. It is pertinent to note there is no specific bar to use cheques randomly and the same can used at any time. As already stated supra, the defence side has not probablised her version and rebutted the the presumption in favour of the complainant. In this regard, the defence ha relied upon the judgment in :-(1) 2011 (3) MWN (Cr) DCC 1 -P.Krishnasamy/vs/ Delta Knit Wearables (2) 2013(3) MWN (Cr) DCC 19 (Ker)-V.S.Chandran / vs/ Bindhu & State of Kerala. The facts of the said judgment are not similar to the present case and could not be relied.*
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> *14.In view of the above discussion it is concluded that the defense side has failed to satisfactorily establish its version. The case of the defense side was not probabilised. Since the defense has not probabilised its version, the presumption in favour of the complainant still exist. If fine, the accused is guilty for the offence under Section 138 of NI Act."*

15. I find the approach of the trial Court to be eminently sustainable. Therefore, I confirm the conviction imposed on the revision petitioner. But taking note of the fact that the transaction had taken place more than almost a decade ago and since the revision petitioner is a lady, I am of the view that the modification of sentence is necessary.

(i) The revision petitioner is directed to deposit the cheque amount of Rs.9,00,000/- (Rupees Nine Lakhs Only) to the credit of S.T.C.No.760 of 2011 on the file of learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, within a period of two months from the date of receipt of a copy of this order.

(ii) On such deposit, it is open to the complainant to withdraw the said amount without notice to the accused.

(iii) If the revision petitioner fails to deposit the cheque amount within the period stipulated above, the sentence imposed by the Sessions Court will be restored automatically. If the petitioner makes the said deposit, the sentence imposed on the petitioner will not be enforced against her.

16.With this modification in the matter of sentence, this Criminal Revision case is partly allowed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

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, Fast Track Mahila Court,
Sessions Court, Karur.

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

3.-Do-Thro'The Chief Judicial Magistrate, Karur.

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

+1 CC to M/s.S.KARTHIK, Advocate (SR-23783[F] dated 03/12/2020)

+1 CC to M/s.P.ARUN JAYATRAM, Advocate (SR-23828[F] dated 03/12/2020)

Crl.R.C.(MD)No.386 of 2016
01.12.2020

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