



BAIL SLIP

The petitioner/Accused namely 1.P.Murugesan 2. M.Ravi were released on bail as per order of this court dated 15.06.2016 and made in CRL MP(MD)No.4677 of 2016 in CRL RC (MD)No.392 of 2016 on the file of the Madurai Bench of Madras High Court.

The Petitioner/Accused namely M.Thangavel was released on bail as per order of this Court dated 15.06.2016 and made in CRL MP (MD)4679 of 2016 in CRL RC(MD)No.393 of 2016 on the file of the Madurai Bench of Madras High Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)Nos.392 and 393 of 2016

Crl.R.C. (MD)No.392 of 2016 :

1.P.Murugesan
2.M.Ravi

... Petitioners/Appellants/Accused Nos.2 & 4

Vs.

V.Murugappan ... Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and to allow the revision and set aside the conviction and sentence dated 18.02.2016, made in C.A.No.80 of 2015 on the file of the learned Mahila Fast Track Court, Karur, by confirming judgment dated 24.04.2015 made in S.T.C.No.266 of 2012 in the file of the learned Judicial magistrate, Fast Track Court at Magisterial level, Karur.

Crl.R.C. (MD)No.393 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

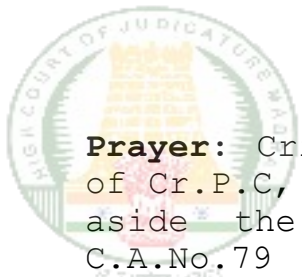
2.M.Thangavel

... Petitioners/Appellants /
Accused Nos.1 & 3

Vs.

V.Murugappan

... Respondent/Respondent/
Complainant



Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and to allow the revision and set aside the conviction and sentence dated 18.02.2016, made in C.A.No.79 of 2015 on the file of the learned Mahila Fast Track Court, Karur, by confirming judgment dated 24.04.2015 made in S.T.C.No.266 of 2012 n the file of the learned Judicial magistrate, Fast Track Court at Magisterial level, Karur.

(in both petitions)

For Petitioners : Mr.S.Vijayakumar

For Respondent : Mr.A.Chandrakumar

COMMON ORDER

Heard the learned counsel on either side.

2.These two revision cases are taken up together as they arise out of the same private complaint. The complainant, namely, V.Murugappan filed S.T.C.No.266 of 2012 before the learned Judicial Magistrate/Fast Track Court at Magisterial Level, Karur against the revision petitioners for the offence under Section 138 of Negotiable Instruments Act r/w 142 of the Negotiable Instrument Act.

3.The learned trial Magistrate vide judgment dated 24.04.2015 found the accused guilty of the offence and sentenced them as follows:

"In the result, 1st accused firm and the accused 2 to 5 are found guilty for offence under Section 138 of NI Act. All the accused are convicted. The 1st accused is sentenced to pay a fine of Rs.1,500/- and in default the 2nd accused shall undergo simple imprisonment for 15 days and the 2nd accused is sentenced to undergo 5 months simple imprisonment and shall pay a fine of Rs.1,500/- and in default shall undergo 15 days simple imprisonment, the 3rd accused is sentenced to undergo 5 months simple imprisonment and shall pay a fine of Rs.1,500/- and in default shall undergo 15 days simple imprisonment, the 4th accused is sentenced to undergo 5 months simple imprisonment and shall pay a fine of Rs.1,500/- and in default shall undergo 15 days simple imprisonment, the 5th accused is sentenced to undergo 5 months simple imprisonment and shall pay a fine of Rs.1,500/- and in default shall undergo 15 days simple imprisonment as per Section 255(2) Cr.P.C."

4.Aggrrieved by the same, A1 and A3 filed C.A.No.79 of 2015 before the learned Mahila Fast Track Court, Karur. A2 and A4 filed C.A.No.80 of 2015 before the same Court. By separate judgments dated 18.02.2016, the appeals were partly allowed and there was a



modification in the matter of sentences alone. Challenging the same, these revision petitions came to be filed.

5. During the pendency of these revision cases, A2/P. Murugesan had passed away. Therefore, Crl.R.C.(MD) No.392 of 2016 stands abated in respect of the first petitioner alone. It is also seen that A5, namely, Thomas suffered conviction and sentence at the hands of the trial Magistrate does not appear to have filed any appeal or revision.

6. The learned counsel appearing for the accused reiterated all the contentions set out in the memorandum of the grounds and 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)**. He would contend that there are no specific averments against Thiru.Ravi. He also pointed out that the notice was served only on A2 alone and that the other accused in particular, Thiru.Ravi, did not receive the notice. According to him, Thiru.Ravi was only a sleeping partner. He had quit the firm before the cause of action arose. Therefore, according to the petitioners' counsel, the impugned complaint was not maintainable against Thiru.Ravi.

7. I am not persuaded by the contentions of the learned counsel appearing for the accused. The complainant can only issue the notice only to the last known address. If the accused changed the address subsequently, notice issued on the accused will be returned unserved. The complainant cannot be blamed. In this case, the complaint cheque (Ex.P.1) was signed by Thiru.Thangavel/A3 and he had received the legal notice. Though notice was issued to the firm as well as all the other named accused, no reply was issued by Thangavel. It is relevant to note here that both Thangavel as well as Ravi are brothers. Ravi had not caused any paper publication notifying his retirement from the accused Firm. Aharam Export Fabrics was a registered partnership firm. There is material evidence to show that the Ravi was originally the partner.

8. I went through the contents of the complaint. Specific averments required under Section 141 of Negotiable Instruments Act, are set out in the complaint. The complainant cannot be expected to do anything more than that. The cheque was issued by the accused firm. It was Thangavel, who signed the complaint cheque. Therefore, Thangavel cannot plead that he was not responsible for the affairs of the firm. Of course, Thiru.Ravi/A4 was not the signatory in the cheque. But then the act of one partner will definitely bind the other partner also. Thiru.Ravi did not enter the witness box. Specific averments for fastening vicarious liability have been set out in the complaint. The complainant examined himself. Presumption under Section 139 of the Act was invoked. There is complete absence of evidence on the part of the accused to rebut the same. The courts below rightly found not only the accused firm and the signatory



guilty of the offence but also rightly fastened the liability on the partners in their vicarious capacities.

9. The learned counsel for the complainant relied on the decision of the Honourable 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. I am exercising revisional jurisdiction and the contentions of the learned counsel for the petitioners do not persuade me to come to the conclusion that the findings of the Court below are vitiated by perversity or material irregularity. The conviction imposed on the accused, namely, A1, A3 and A4 stand confirmed. However, taking note of the facts and circumstances, the sentence imposed on the accused is modified as follows:



(i) The accused are directed to deposit the cheque amount of Rs.5 lakhs to the credit in S.T.C.No.266 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court, at Magisterial Level, Karur within a period of 12 weeks 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 petitioners.

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 Courts below will be automatically restored.

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

11. If the revision petitioners deposit the cheque amount in question, the benefit of this order will also enure in favour of the non-petitioning accused No.5, namely, Thomas also. These Criminal Revision Petitions are disposed of accordingly.

Sd/-

Assistant Registrar (Records)

// 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 Judge, Mahila Fast Track Court, Karur.
- 2.The Judicial magistrate, Fast Track Court
at Magisterial level, Karur.
- 3.-Do- Through The Chief Judicial Magistrate,
Karur.



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

WEB COPY

+2 CC to Mr.S.VIJAYA KUMAR, Advocate (SR-23477,23478[F] dated
01/12/2020)

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01.12.2020

VB (31.12.2020) 6P 8C