BAIL SLIP

The Peitioner/Solo Accused namely N.Srinivasan,Male, aged 51 years, S/o.K.Nagarajan, was directed to be released on bail as per the order of this Court, dated 24/06/2016 in CRL.MP(MD) 5107 of 2016 in CRL.RC(MD) 438 of 2016 on the tile of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.12.2020
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl.R.C(MD)No.438 of 2016

N.Srinivasan ... Petitioner/Appellant/Accused
Vs
P.R.Raja ... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for records pertaining to the Judgment in C.A.No.14 of 2015 on the file of the II Additional District and Sessions Judge, Thanjavur, dated 25.02.2016 confirming the conviction and sentence of one year simple imprisonment and direction to pay the cheque amount of Rs.5,00,000/- as compensation in default to undergo three months simple imprisonment imposed by the Judgment dated 04.02.2015 in C.C.No.27 of 2014 on the file of the Judicial Magistrate Fast Track Court, Thanjavur and set aside the same by acquitting the accused.

For Petitioner : Mr.T.A.Ebenezer
For Respondent : Mr.A.Thiruvadi Kumar

ORDER

Heard the learned counsel on either side.

2.The respondent P.R.Raja filed C.C.No.27 of 2014 on the file of the Judicial Magistrate Fast Track Court, Thanjavur, against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. The complainant examined himself as P.W.1 and ICICI Manager as P.W.2. Ex.P1 to Ex.P9 were marked. The revision petitioner examined himself as D.W.1 and also examined two other witnesses on his side. He marked Ex.D1 to Ex.D3. The learned trial Judge, by Judgment dated 04.02.2015, came to the conclusion that the accused is guilty of the offence in question and sentenced him to one year simple imprisonment. The learned trial Magistrate also directed the revision petitioner to pay the cheque amount of Rs.5,00,000/- as compensation to the complainant. The default sentence of three months simple imprisonment was also imposed. Questioning the same, the accused filed C.A.No.14 of 2015. By Judgment dated 19.06.2015, the learned Appellate Judge allowed the appeal and set aside the Judgment passed by the trial Magistrate and remanded the matter to the trial Court for fresh trial by giving opportunity to both sides to let in fresh evidence. The said Judgment was put to challenge both by the complainant as well as by the accused before this Court. By common order dated 14.09.2015, this Court disposed of Crl.R.C.Nos.320 and 366 of 2015 by setting aside the order of remand and directing the Appellate Court to dispose the appeal on merits. Thereafter, the Appellate Court took up the matter once again and vide Judgment dated 25.02.2016, dismissed the appeal and confirmed the conviction and sentence imposed on the petitioner by the trial Court. Challenging the same, this revision case came to be filed by the accused.

3.The learned counsel appearing for the accused submitted that the complainant has not approached the Court with clean hands. The complaint cheque Ex.P1 is dated 19.02.2010 and is for a sum of Rs.5,00,000/-. According to the learned counsel for the accused, the accused had borrowed only a sum of Rs.3,00,000/- from the complainant and out of the same, a sum of Rs.2,00,000/- was already paid. He also would place heavy reliance on Ex.P9/Ex.D1 and Ex.D2 and contended that a mere perusal of the same would reveal that the case of the complainant that the accused had borrowed a sum of Rs.5,00,000 is false. The learned counsel for the petitioner would also point out that the accused had admitted his signature in the agreement. His core argument is that only if on the date of the cheque, the accused is having subsisting and legally enforceable liability, then alone, the offence under Section 138 of the Negotiable Instruments Act will be made out and not otherwise. His pointed argument is that the cheque bears the date 19.02.2010 and that it was presented on the same date 'for collection'. On the said date, it has not been established that the accused is liable to pay a sum of Rs.5,00,000/- to the complainant. This forms the sheet anchor of the argument advanced by the learned counsel for the accused / revision petitioner.

4.I am not persuaded by the aforesaid contentions advanced by the learned counsel appearing for the accused. The case of the complainant is that the accused had borrowed a sum of Rs.2,00,000/- from him on 10.11.2008 and a further sum of Rs.2,99,500/- on 12.11.2008 and towards discharge of this liability, Ex.P1 complaint cheque dated 19.02.2010 for a sum of Rs.5,00,00 was issued in favour of the complainant.

5.I wanted to know if there is any evidence indicating the said transaction. The learned counsel appearing for the complainant drew my attention to Ex.P6, Ex.P7 and Ex.P8. From a mere perusal of the said documents, one can very easily come to the conclusion that the complainant had deposited a sum of Rs.4,99,500/- in the account of the accused. Thus, the transfer of fund from the complainant to the accused to the tune of Rs.4,99,500/- is established. The said cheque was presented on 19.02.2010 in the complainant's bank account namely Axis Bank Limited, Thanjavur. But the same was returned for the reason of 'insufficiency of funds' in the account maintained by the accused. After receiving intimation, the complainant had issued Ex.P4 dated 16.03.2010. It is not in dispute that the statutory notice was correctly addressed to the accused. It was sent by registered post. The returned cover has been marked as Ex.P5. It was returned with an endorsement 'not claimed'. Thus, the accused had declined to receive the notice issued by the complainant and therefore, no reply notice has been issued. Since the demand set out in the statutory notice was not complied with, the private complaint came to be instituted.

6.The complainant had examined himself as witness and also marked Ex.P.1 to Ex.P9. The signature attributed to the accused is not disputed. Therefore, in the very nature of things, the presumption under Section 139 of the Negotiable Instruments Act automatically got triggered. It was for the accused to rebut the presumption against him. In order to rebut the same, the accused, in the cross examination of the complainant marked Ex.P9 and through himself marked Ex.D1 and Ex.D2. Since the original records had been called for, I had the benefit of perusing the said documents. As rightly pointed out, the said document contains two pages. In Page No.2, the original signature of the accused is there. But then, the signature of the complainant is absent in Page No.2. If the document was actually prepared, it would be in two sets. In the set of the complainant, may be, his signature is not required. In the set of the accused, the signature of the complainant originally ought to be there. But such a document has not been filed or produced by the accused. Since the material averments relied on by the accused are in Page No.2 and the signature of the complainant is not there, Ex.P9 will not come to rescue of the accused.

7.I carefully went through the cross examination of D.W.1. The complainant had specifically suggested that Page No.2 of the Ex.D2 (which is said to be photocopy of Ex.P9) marked by the accused is a forged document and that, he is clearly disowning his signature found at Page No.2. Therefore, I have to necessarily sustain the findings of the Courts below that by marking Ex.P9, the presumption raised against the accused under Section 139 of the Negotiable Instruments Act has not been rebutted.

8.Of-course, the accused had examined one Banumathi as D.W.2. I went through the testimony of Banumathi. Banumathi as D.W.2 would state that the accused approached her for financial assistance and that, she arranged a loan of Rs.5,00,000/- from Muthuvel Chettiar and that, the cheques in question were given by the accused only to Muthuvel Chettiar and not to the complainant herein. But then, this is a mere claim without any material basis and this cannot be in any way strengthen the defence of the accused. In any event, in view of Ex.P6 to Ex.P8, the claim that it was the Muthuvel Chettiar who gave Rs.5,00,000/- to the accused is not borne out. The fact remains that the complainant P.R.Raja had deposited a sum of Rs.5,00,000/- in the account of the accused and the defence now advanced appears to be an after thought. In any event, as rightly pointed out by the learned counsel appearing for the complainant, I am only exercising my revisional jurisdiction. The Courts below have concurrently found that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act.

9.On a careful re-appreciation of the entire evidence on record, I find no ground to take a different view. Therefore, the conviction imposed on the accused under Section 138 of the Negotiable Instruments Act is confirmed. However, taking note of the other aspects, I am of the view that some modification in the matter of sentence is warranted. Therefore, the sentence imposed on the petitioner is modified as follows:-

(I)The petitioner is directed to deposit the cheque amount of Rs.5,00,000/- to the credit of C.C.No.27 of 2014 on the file of the Judicial Magistrate Fast Track Court, Thanjavur, within a period of three months from the date of receipt of a copy of this order.

(II)It is open to the complainant to withdraw the cheque amount without notice to the petitioner.

(III)If the petitioner fails to deposit the said cheque amount within the aforesaid period, the sentence imposed on the petitioner by the Courts below will stand automatically restored.

10.With this modification, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (CSIII)

// 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 Judicial Magistrate Fast Track Court, Thanjavur.

2.The II Additional District Sessions Judge, Thanjavur.

Copy to

The Section Officer,(2Copies)
Crminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-24234[F] dated 07/12/2020)

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NA(CO)
KB(22.12.2020) 5P 6C