



BAIL SLIP

M.Venkatasalam, S/o. Murugappan, male, aged about 63 years/2016 was released on bail vide court order dated 08.08.2016 made in CRL MP (MD).5785/2016 in CRL RC (MD).489/2016.

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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.489 of 2016

M.Venkatasalam ... Petitioner/Appellant/Petitioner

Vs.

Sheik Alavudeen (died)

1.Kurzithbegam

2.Nikara Canija

3.Fathima Gani

4.Mahamuda Beevi ... Respondents/Respondents/Respondents

[Respondents 1 to 4 are legal heirs of the deceased Sheik Alavudeen, they have *suo motu* impleaded by judgment dated 01.12.2020.]

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records pertaining to the orders passed in C.A.No.8 of 2013 on the file of the learned District and Sessions Judge, Sivagangai dated 15.03.2016 modifying conviction the orders passed in S.T.C.No.60 of 2012 on the file of the learned Judicial Magistrate (Fast Track) Court, Karaikudi, dated 10.01.2013 and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.Abiya

For Respondents : Mr.R.Sundar Srinivasan

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the legal heirs of the original complainant.

2.The respondent/original complainant filed S.T.C.No.60 of 2012 before the Judicial Magistrate/Fast Track Court, Karaikudi against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act. The same ended in conviction and sentence on 10.01.2013. The Court below found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo two years Simple



Imprisonment and directed to him to pay a sum of Rs.1,00,000/-; default sentence was also imposed. Questioning the same, the revision petitioner filed C.A.No.8 of 2013 before the District and Sessions Judge, Sivagangai.

3.The Appellate Court vide judgment dated 15.03.2016, modified the sentence. It granted four months to pay the compensation amount of Rs.1,00,000/-. In default, the revision petitioner was to undergo six months simple imprisonment. However, the entire cheque amount was directed to be paid by the revision petitioner to the complainant. Challenging the same, this revision petition came to be filed.

4.The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of the grounds. He also pointed out that the revision petitioner had already filed Insolvency Petition in I.P No.1 of 2010 before the Sub Court, Devakottai and that the original complainant is figuring as the first respondent in the said petition. The said I.P is said to have been dismissed on 22.03.2016 and there is nothing on record to show that it has been restored to the file of the sub court. Since the original complainant is the first respondent in the I.P, the liability of the petitioner is beyond dispute. The cheque in question has been issued towards enforcing the liability and the signature appearing in the cheque is not in dispute. Therefore, the presumption under Section 139 of Negotiable Instruments Act automatically got triggered against the petitioner. The petitioner has not rebutted the presumption raised against him. Therefore, I come to the conclusion that the finding of guilt rendered by the Courts below has to be confirmed.

5.Accordingly, I confirm the conviction imposed on the petitioner but some modification in the matter of sentence is needed. The revision petitioner is aged about 67 years. He had already filed insolvency petition. Though the learned counsel for the respondents would claim that the petitioner is having means but no material has been produced to that effect. Considering his age and other aspects, the sentence imposed on the revision petitioner by the Court below is modified as follows:-

(i) The petitioner had already deposited a sum of Rs.50,000/- at the time of obtaining suspension of sentence. The wife of the complainant, namely, Kurzithbegam is permitted to withdraw the said amount from the Court deposit without notice to the petitioner herein.

(ii) The petitioner is directed to deposit a further sum of Rs.1,50,000/- to the credit of S.T.C.No.60 of 2012 on the file of the learned Judicial Magistrate (Fast Track Court), Karaikudi within a period of twelve weeks from the date of receipt of a copy of



this order.

(iii) If the petitioner fails to deposit the said amount within the period stipulated above, the sentence imposed by the appellate court will be restored automatically.

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

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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 District and Sessions Judge, Sivagangai.
2. The Judicial Magistrate (Fast Track) Court, Karaikudi.
3. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to Mr.K.ABIYA, Advocate SR.No. 23574

+1 CC to Mr.R.SUNDAR SRINIVASAN, Advocate SR.No. 23571

Crl.R.C.(MD)No.489 of 2016
01.12.2020

MJ(CO)

TR(08.01.2021) 3P 7C