



BAILSLIP

The Revision Petition/Accused Mathew Lawrence, 35 years, S/o Lawrence was released on bail in CRL.MP(MD).No.7056 of 2016 in CRL.RC(MD).No.563 of 2016 dated 17/08/2016 by this Hon'ble Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.R.C(MD).No.563 of 2016

Mathew Lawrence

... Petitioner/Appellant/Sole Accused

Vs

Baradarajan

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records and set aside the judgment passed in C.A.No.52 of 2013 dated 21.07.2016 on the file of the Fast Track Mahila Court, Sivagangai by confirming the judgment in C.C.No.76 of 2012 dated 20.11.2013 on the file of the Judicial Magistrate (Fast Track) Karaikudi and acquit the petitioner.

For Petitioner

:Ms.K.R.Sivashankari (Legal Aid Counsel)

For Respondent

:Mr.M.Karunanithi

ORDER

Heard the learned counsel for the revision petitioner/accused.

2.The case of the complainant is that the accused had business dealing with him and that the complainant had given certain items on credit basis and towards discharge of the said liability, the accused had issued Ex.P.1-Cheque dated 20.02.2006 for a sum of Rs.1,50,000/-. The said cheque was presented for collection, but the same was returned 'dishonoured' on 05.04.2006. The complainant issued Ex.P.4-notice, dated 01.05.2006. The accused received the same as evidenced by Ex.P.5-Acknowledgement card. Since the demand set out in the legal notice was not complied with, the complainant filed C.C.No.76 of 2012 before the Judicial Magistrate/Fast Track Court (Magistrial Level), Karaikudi against the revision petitioner for the offence under Section 138 of the Negotiable Instrument Act.

3.The complainant examined himself as P.W.1 and the Bank Manager as P.W.2. He also marked Ex.P.1 to Ex.P.6. The accused did not examine anyone as defence witness, but marked Ex.D.1 to Ex.D.11.

4.The learned trial Magistrate noted that the cheque amount

had been paid by the accused to the complainant before the commencement of the trial. Therefore, notwithstanding such a specific findings given by the Court below in favour of the accused, the Court below chose to find him guilty and sentenced him to one month Simple Imprisonment, vide judgment dated 20.11.2013. Questioning the same, the revision petitioner filed C.A.No.52 of 2013 before the Fast Track Court, Mahila Court, Sivagangai. By judgment dated 21.07.2016, the appeal was dismissed and sentence imposed on the revision petitioner was confirmed. Challenging the same, this Revision Case came to be filed.

5.The case of the complainant is that, he had dealing with the accused for several years. In fact, the father of the complainant also had dealing with the father of the accused. It is true that the complainant had received demand draft to the tune of Rs.1,50,000/- after filing of the complaint and before the commencement of the trial. But, this amount was towards the liability of the accused in respect of earlier transactions.

6.I am not persuaded by the said contention. The revision petitioner had marked Ex.D.2 addressed by the learned counsel for the complainant, even while denying his liability the accused had expressed his readiness to settle the claim raised by the complainant. Due to the undertaking given in Ex.D.1, the petitioner had paid a sum of Rs.1,50,000/- in four instalments. It is seen that vide Ex.D.8, the petitioner had paid a sum of Rs.1,50,000/- to the complainant on 28.06.2006. Thus, if the case of the complainant is that this amount discharged the liability of the accused in respect of some other transaction, the complainant should have clarified it then and there. He had not done so. Having received the demand draft for a sum of Rs.1,50,000/- and encashed the same, it is not open to the complainant to sing a different tune later. The complainant had nowhere taken the stand now taken before this Court. Ex.P.1 is the returned cheque. Ex.P.2 and Ex.P.3 are the memos sent by the banks. Ex.P.4 is the lawyer's notice. Ex.P.5 is the acknowledgment card. Ex.P.6 is the statement of accounts. There is no specific communication from the complainant to the accused that the demand draft recieved by him would represent some other liability. Therefore, I am satisfied that the accused had settled his liability in full even before commencement of the trial. Ofcourse, as rightly pointed out by the complainant once the accused fails to comply with the demand set out in the legal notice within the time stipulated therein, offence is completed. Therefore, I cannot fault the finding of the Court below that the accused is guilty of the offence under Section 138 of the Negotiable Instrument Act. But, this is a case, in which, the accused does not deserve to be sentenced at all. In this view of the matter, even while confirming the conviction imposed on the revision petitioner, the sentence imposed on him is set aside in *toto*.



7. Accordingly, the Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,
Fast Track Mahila Court, Sivagangai

2. The Judicial Magistrate (Fast Track), Karaikukdi.

3. Do-Thro The Chief Judicial Magistrate,
Sivagangai.

Copy to

The Section Officer, (2Copies)
Criminal Section,
Madurai Bench of Madras High court,
Madurai.

+1CC to Ms.K.R.Sivashankari, Advocate, SR.No.25860 dated 17/12/2020

Cr1.R.C(MD).No.563 of 2016
15.12.2020

SVN(CO)

KB(05.02.2021) 3P 8C