



BAIL SLIP

The Criminal Revision Petitioner/Accused Mathew Lawrence was directed to be released on Bail vide order in Crl.MP(MD) No.7058/2016 in Crl.RC(MD) No.564/2016 dated 17/08/2016 on the file of the Madurai Bench of Madras High 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.564 of 2016

Mathew Lawrence

... Petitioner/
Appellant/Accused

Vs

Baradarajan

... Respondent/
Respondent/Complainant

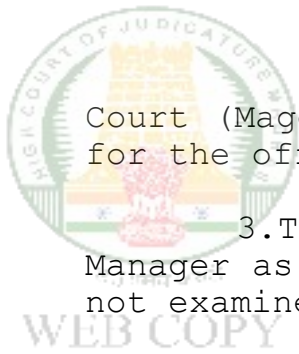
PRAYER: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records and set aside the judgment passed in C.A.No.51 of 2013 dated 21.07.2016 on the file of the Fast Track Mahila Court, Sivagangai by confirming the judgment in C.C.No.77 of 2012 dated 20.11.2013 on the file of the Judicial Magistrate (Fast Track) Karaikukudi and acquit the petitioner.

For Petitioner : Ms.K.R.Sivashankari, Advocate
For Respondent : Mr.M.Karunanithi, Advocate

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.3,00,000/-. 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 11.05.2006. 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.77 of 2012 before the Judicial Magistrate/Fast Track



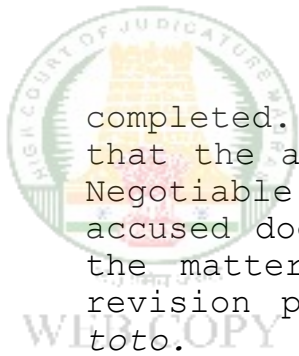
Court (Magestrial Level), Karaikudi against the revision petitioner for the offence under Section 138 of the Negotiable Instrument Act.

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.51 of 2013 before the Fast Track 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 father of the accused. It is true that the complainant had received demand draft to the tune of Rs.3,00,000/- 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 accused wherein, even while denying his liability the accused had expressed his readiness to settle the claim raised by the complainant. True to his undertaking, the petitioner had paid a sum of Rs.3,00,000/- in four instalments. It is seen that vide Ex.D.9 and Ex.D.10, the petitioner had paid a sum of Rs.3,00,000/- to the complainant on 11.10.2006 and 23.02.2007. If the case of the complainant is that this was towards discharge of the liability of the accused in respect of some other transactions, the complainant should have clarified it then and there. He had not done so. Having received the demand drafts for a sum of Rs.3,00,000/- 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 received by him was towards 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



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 the 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 (AD-II)

/TRUE COPY/

/ /2021
Sub Assistant Registrar

To

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

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

+1. C.C. to M/S.S. SRINIVASA RAGHAVAN, Advocate SR.No. 25861

Cr1.R.C(MD).No.564 of 2016
15.12.2020

RMK
JM/18.01.2021/3P/4C