

**BAIL SLIP**

The Revision Petitioner/Accused C.Karthikeyan, S/o.Chinniah, was enlarged on bail in Crl MP(MD)No.172 of 2017 in Crl RC(MD)No.21 of 2017 dated 09.01.2017 by this Hon'ble Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl. R.C.(MD)No.21 of 2017 andCRL.M.P.(MD)No.171 of 2017

C.Karthikeyan

.. Petitioner/Appellant/
Accused

Vs.

T.Jacob Rajan

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision filed under Sections 397 & 401 of Cr.P.C., to call for the records and set aside the order passed by the Mahila Fast Track Court, Sivagangai in C.A.No.30 of 2013 dated 30.09.2016 confirming the Judgment made in C.C.No.165 of 2012 on the file of the learned Judicial Magistrate, Karaikudi, dated 11.06.2013.

For Petitioner : Mr.M.Solaisamy,
Legal Aid Counsel.

For Respondent : Mr.B.Muruganandham

ORDER

The respondent herein filed C.C.No.165 of 2012 on the file of the Judicial Magistrate/Fast Track Court, Karaikudi, for the offence under Section 138 of the Negotiable Instruments Act, against the petitioner herein.

2. The case ended in conviction and sentence. The petitioner filed C.A.No.30 of 2013 before the Fast Track Mahila Court, Sivagangai. By Judgment dated 30.09.2016, the appellate Court dismissed the appeal and confirmed the Judgment of the trial Court. Questioning the same, this criminal revision case came to be filed.

3. When the matter was taken up for hearing, the learned counsel who appearing for the petitioner did not represent. Therefore, this Court directed the Registry to appoint a Legal Aid counsel. Today, the learned Legal Aid counsel appeared before this Court and reiterated all the contentions set out in the memorandum of grounds. He wanted this Court to set aside the impugned Judgments and acquit the revision petitioner and allow this revision case.

<https://hcservices.ecourts.gov.in/hcservices/>

4. Per contra, the learned counsel appearing for the



complainant submitted that the impugned Judgment do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

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6. The case of the complainant is that he is engaged in construction business and also real estate business and he is also having a textile shop. The accused and the complainant were known to each other for three years prior to the transaction in question. According to the complainant, on 05.09.2011, the accused availed loan of Rs.7,00,000/- for business purpose and towards repayment of the said amount, he issued Ex.P.1 cheque. The same was presented for collection on 24.02.2012. It was returned unpaid with an endorsement "insufficiency of funds". The complainant issued Ex.P.3 notice dated 25.02.2012. The accused also received the same on 17.03.2012 (Ex.P.4). Since the demand set out in the notice was not complied with, the complainant filed the aforesaid private complaint.

7. The learned Legal Aid counsel appearing for the petitioner submitted that the complaint had been filed on the strength of Ex.P.1 cheque which was entrusted by the petitioner with some other person, namely, Nagarajan. The transaction was between the accused and the said Nagarajan and according to the learned Legal Aid counsel, the petitioner had no transaction whatsoever with the complainant. He also pointed out that after receiving the statutory notice, the accused had issued reply notice. But then, the complainant fraudulently refused to receive the reply and the cover was returned unserved. The accused had examined himself as D.W.1 and thus the presumption available under Section 139 of the Negotiable Instruments Act had been sufficiently rebutted.

8. I am not persuaded by the aforesaid contentions of the learned counsel appearing for the revision petitioner. It is not in dispute that the signature found in Ex.P.1 cheque is that of the petitioner. The complainant had examined himself as D.W.1 and thus the presumption under Section 139 of the Negotiable Instruments Act got triggered. It was for the accused to have rebutted the same by proving by preponderance of probability.

9. The question is whether the revision petitioner had discharged the burden cast on him. It is true that the revision petitioner had taken the defence that the cheque in question was given to some other person and not to the complainant herein. In this regard, the accused is said to have lodged a criminal complaint and the same was also registered and the First Information Report was marked as Ex.D.1. But as rightly pointed out by the complainant, lodging of the criminal case was subsequent to the arising of the cause of action. That apart, the said criminal case was closed as "Mistake of Fact" and the accused does not appear to have taken any further step. Thus, the core defence taken by the accused had fallen flat.



10. The complainant was a businessman who was aged about 33 years and therefore, it is quite probable that the complainant had the means to advance the amount in question to the accused. The Courts below have disbelieved the version given by the accused. Since the accused had come out with a false version and since the presumption raised against him has not been rebutted, the Courts below have concurrently found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act. The contention advanced by the learned Legal Aid counsel does not persuade me to hold that the findings of the Courts below are vitiated by material irregularity or perversity.

11. Therefore, I confirm the Judgment of conviction imposed on the revision petitioner. However, in view of the mitigating circumstances pleaded by the learned Legal Aid counsel, the sentence of imprisonment imposed on the petitioner is modified as follows:-

i) The revision petitioner is directed to deposit the cheque amount of Rs.7,00,000/- (Rupees Seven Lakhs only) to the credit of C.C.No.165 of 2012 on the file of the Judicial Magistrate/Fast Track Court, Karaikudi, within a period of eight weeks from the date of receipt of a copy of this order.

ii) The complainant can withdraw the said amount without notice to the revision petitioner.

iii) If the revision petitioner fails to deposit the cheque amount within the time stipulated above, the sentence imposed on the revision petitioner by the Courts below will be automatically restored. If the revision petitioner makes the deposit of the cheque amount within the time stipulated above, the sentence imposed on the revision petitioner by the Courts below will not be implemented.

12. With this modification, this criminal revision case is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

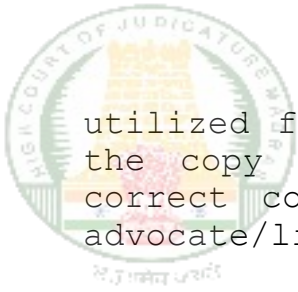
Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

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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.

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To

1. The Mahila Fast Track Judge,
Sivagangai.
2. The Judicial Magistrate,
Karaikudi.
- 3.-do-thro The Chief Judicial Magistrate, Sivagangai.
- 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1cc to Mr.B.MURUGANANDAM,Advocate, SR No.26474

Cr1. R.C.(MD)No.21 of 2017
18.12.2020

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svn(CO)

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