



Bail Slip

P.Sreerangan, S/o. Palaniappa Gounder, (male) aged 53/2015 was released on Bail vide Court order dated 12-01-2017 made in Crl MP (MD) No.446/2017 in Crl RC (MD) No.43/2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.R.C (MD) No.43 of 2017

P.Sreerangan ... Petitioner/Appellant/Accused

Vs

S.Sivasankar ... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the Judgment, dated 22.11.2016 in C.A.No.72 of 2016 on the file of the Fast Track (Mahila) Court, Karur, confirming the Judgment dated 24.11.2015 in S.T.C.No.322 of 2012 on the file of the Judicial Magistrate (Fast Track Court) at Magisterial Level, Karur and allow this criminal revision.

For Petitioner	:	Mr.H.Lakshmi Shankar
For Respondent	:	Mr.Ramanathan for Mr.K.Balasubramanian

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent / complainant.

2.The respondent filed S.T.C.No.322 of 2012 on the file of the Judicial Magistrate (Fast Track Court) at Magisterial Level, Karur, against the petitioner herein for the offence under Section 138 of the Negotiable Instruments Act. The same ended in conviction and sentence. Questioning the same, the petitioner filed Crl.A.No.72 of 2016 before the Fast Track (Mahila) Court, Karur. Vide order dated 22.11.2016, the appeal was dismissed and the Judgment of the trial Court was confirmed. Challenging the same, this criminal revision case came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgments and acquit the petitioner and allow this revision case.

4.Per contra, the learned counsel appearing for the complainant submitted that the impugned Judgments do not warrant any

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interference and called upon this Court to dismiss this revision petition.

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 was working in a Transport Company and that, the revision petitioner is running a Transport Company and they came in contact with each other during the course of business. According to the complainant, the accused borrowed a sum of Rs.5,00,000/- on 21.12.2008 and executed Ex.P1-Promissory note, dated 21.12.2008, for a sum of Rs.5,00,000/- favouring the complainant. The accused had agreed to repay the loan amount with monthly interest at the rate of 24% per annum. The accused later is said to have approached the complainant and told him that he is having financial difficulties and unable to pay the interest amount. The complainant, accepting the request of the accused, waived the entire interest amount and agreed to receive the principal amount. In order to discharge the said liability, the accused is said to have issued Ex.P2 Cheque bearing No.530282, dated 20.09.2009, for a sum of Rs.5,00,000/- favouring the complainant. The complainant presented the cheque for collection on 29.12.2009. The cheque was returned dishonoured on 29.12.2009 for the reason that the account had already been closed. After receiving the intimation from the Bank, the complainant issued Ex.P5-legal notice dated 18.01.2010. Though the accused received notice as evidenced by Ex.P6-Acknowledgement Card, he did not issue any reply in time. Since the demand set out in the notice was not complied with, the complainant filed a private complaint. It was later transferred and renumbered as S.T.C.No.322 of 2012.

7.The learned counsel appearing for the complainant pointed out the host of circumstances obtaining in his favour. Firstly, the accused did not issue the reply notice in time. The private complaint was filed on 04.03.2010. The reply notice is dated 10.03.2010. He, therefore, wanted this Court to disregard the said reply. Though it was marked as Ex.P7 by the complainant himself, it was issued only after filing of the complaint. Secondly, the signatures found on the complaint cheque as well as Ex.P1-Pro-note are admitted. Not only the signature of the accused, but also his thumb impression is found in Ex.P1-Pro-note. The complainant had proved the demand, execution of the pro-note and passing of consideration by examining not only himself but also P.W.2-Sivakumar. The learned counsel would point out that D.W.2-Palanisamy is none other than the witness examined by the accused on his side and in his cross examination, he had completely accepted the case of the complainant. He would pointedly contend that D.W.2-Palanisamy was not declared as hostile.

8.The learned counsel for the complainant would lay

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considerable emphasis on the fact that the defence version of the accused that he was having business transaction with one Deivasigamani, employer of the complainant, from the year 2010, was not at all established. If as claimed by him, Ex.P1 and Ex.P2 documents were entrusted by the accused with his erstwhile associate Deivasigamani and the same was misused and the complaint in question was filed through the complainant herein, then, there would be some material in support of the said assertion. Not even a scrap of paper has been filed by the accused. The accused did not even write any letter to Deivasigamani asking to return all the documents, nor did he file any criminal complaint even after the receipt of the legal notice (Ex.P5). The presumption under Section 139 of the Negotiable Instruments Act was therefore rightly invoked in favour of the complainant and against the accused. The accused could not at all rebut the presumption raised against him.

9.The learned counsel also contended that the complainant joined employment under Deivasigamani only in the year 2010, whereas, the transaction in question had taken place in the year 2008. The specific case of the complainant was that he was then doing business and that, therefore, the capacity of the complainant to lend the loan in question cannot be challenged. He would also point out that the defence's exhibits were belatedly marked, even though the accused would claim that he was in possession of those documents even at the commencement of the trial. The suggestion of the learned counsel for the complainant is that the accused, in order to fill up the lacuna on his side, after the cross-examination of the complainant, had fabricated those documents and filed them.

10.The learned counsel for the complainant would draw my attention to the answer given by the accused in the cross examination that the account was in operation till one month prior to the issuance of the complaint cheque. The contentions of the learned counsel appearing for the complainant are formidable. As contended by him, while exercising revisional jurisdiction, the scope for intervention is available only if it can be demonstratively shown that the findings of the Courts below are vitiated by perversity or material irregularity.

11.The foremost contention of the learned counsel appearing for the revision petitioner is that he was having business relationship with one Devasigamani, who was running the proprietary concern in the name and style of 'Modern Engineering Services'. The relationship between the accused and the said Deivasikamani had come to an end in the year 2007 itself. In connection there with, the revision petitioner is said to have entrusted Ex.P1-pro-note and Ex.P2-complaint cheque in a signed blank form with the said Deivasigamani. Admittedly, the complainant was working under Deivasigamani atleast from the year 2010 onwards. According to the accused, the said Deivasigamani had misused those cheques and

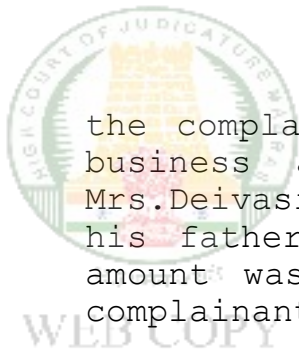


engineered the impugned prosecution through his employee namely Sivasankar. In order to establish this defence, the learned counsel appearing for the revision petitioner pointed out that by referring to Ex.D2 (statement of account) issued by ICICI Bank, it can be seen that the cheque bearing No.530295 was presented on 11.05.2006. Ex.P2 bears No.530282. Thus evidence has been placed before this Court to show that the cheque leaf bearing a subsequent number was put to use in May 2006 itself.

12.From this, one can safely draw the conclusion that the cheque in question was issued by the Banker of the accused in the year 2006 itself. Though as pointed out by the learned counsel for the complainant, the reply notice (Ex.P7) was not issued immediately and was issued only after filing of a complaint, a mere look at the original record would show that the complaint was filed on 04.03.2010 and that, it was directed to be called on 12.03.2010. On 12.03.2010 the complainant was absent. It was adjourned to 19.03.2010. On 19.03.2010, sworn statement was recorded and cognizance of the offence was taken and summons was issued to the accused and the case was directed to be called on 21.04.2010. Ex.P7-Reply notice, which was marked by the complainant himself, is dated 10.03.2010.

13. In as much as Ex.P7 was marked by the complainant himself, I am of the view that the contents of the said reply notice can very well be taken note of by the Court. The specific stand of the complainant is that he had no money dealings with the said Deivasigamani at any point of time and that, he was working as a clerk under Deivasikamani. It has been specifically contended in the said reply that the complainant Sivasankar has no means to advance such a huge amount in one lump sum. In fact, during arguments, that was the sheet anchor of the contentions advanced by the learned counsel appearing for the revision petitioner. Since the source of funds had been specifically challenged at the earliest point of time, the complainant is obliged to establish the same.

14.In the cross-examination, the complainant had admitted that he is an income tax assessee and he is remitting income tax also. However, he added that he had not filed the relevant documents. If really the transaction in question had taken place, certainly, the same would have been duly reflected in the income tax returns filed by the complainant. Of-course, if the complainant had taken a stand that he is not an income tax assessee, then, it would be a different matter altogether. To a specific question, he had admitted that he is an income tax assessee. The complainant had not marked his bank account statements. Rs.5,00,000/- is certainly a substantial amount and the complainant is obliged to satisfy the Court that he had wherewithal to advance the same to the accused. But not even a scrap of material has been placed before the Court to show that he was possessed of sufficient funds. On the other hand,



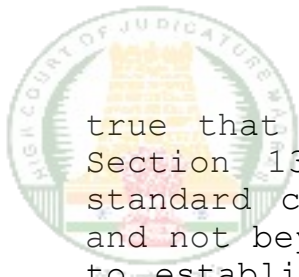
the complainant had also stated that he had suffered loss in his business and that is why, he had become an employee under Mrs.Deivasigamani in the year 2010. He would of-course claim that his father, who is a retired teacher, had funds and the said amount was given by him as loan to the accused. However, the complainant's father was not examined as a witness.

15.I find it difficult to believe that a huge sum of Rs.5,00,000/- was kept at home and that, the said amount was given by the complainant to the accused. The accused does not deny the signatures attributed to him in the pro-note as well as in the complaint cheque. However, he had completely denied having any kind of dealing with the complainant.

16.Of-course, the learned counsel for the complainant would claim that apart from proving its execution through P.W.2, the answers given by D.W.2 would enure to his advantage. It is true that D.W.2 had totally let down the accused and supported the case of the complainant in the cross examination. It is also true that he was not declared as hostile. But on that sole ground, this Court cannot take his version as gospel truth. When the witness is examined before the Court of law, it is for the Court of law to attach the appropriate value to his testimony. In the chief examination, D.W.2 had stated that Ex.P1-Promissory Note was written by him in the office. He also stated that the complainant Sivasankar alone was with him then. He had clearly stated that no one was with him and he was not aware if there was any financial transaction. But in the cross examination, D.W.2 had stated that the pro-note was executed and signed in the house of the complainant and that, the accused executed the pro-note and put his signature and thumb impression after receiving the loan amount from the complainant. The stand taken by D.W.2 in the cross examination is diametrically opposed to what he had stated in the chief examination. The counsel for the accused would state that the chief examination was done on 06.11.2014, while the cross examination was done on 09.12.2014 and that, in the intervening period, he had been won over.

17.Though I would definitely castigate the learned counsel for the accused for not calling upon the Court to declare the said witness as hostile, I am clearly of the view that his testimony is worthless and he is a rank liar. His statement in the chief examination and the statement in the cross examination do not go together. In the cross examination, he had stated that the chief examination was based on the dictation of the accused.

18.I am of the view that the testimony of such witness cannot be given any value. P.W.2 had stated that he is a close friend of the complainant and his case does not advance the case of the complainant. Moreso because, the accused himself has admitted his signature and the thumb impression found in the pro-note. It is



true that the accused is obliged to rebut the presumption under Section 139 of the Negotiable Instruments Act. But then, the standard cast on the accused is only preponderance of probability and not beyond any reasonable doubt. It is only for the complainant to establish his case beyond reasonable doubt. Of-course, he can take aid of Section 139 of Negotiable Instruments Act. But the burden to be discharged by the accused is comparatively lighter.

19.I have no hesitation to come to the conclusion that by examining himself and by marking statement of account and by eliciting certain answers from the complainant, the accused had more than discharged the burden cast on him by law. The Courts below have proceeded on the premise that merely because the accused had admitted his signature, the presumption raised against him can be made absolute. They have failed to notice that the accused had challenged the capacity and wherewithal of the complainant. The complainant had specifically admitted that he was an employee under M/s.Deivasigamani. In the reply notice itself, the accused had taken the stand that he had business dealings with the said Deivasigamani and the instruments given by him had been misused by Ms.Deivasigamani. The failure of the complainant to prove his capacity to lend the amount in question is that he is an income tax assessee and his failure to file the documents reflecting the transaction in question, ought to have made the Courts below to draw adverse inference against the complainant. The failure to do so vitiates the findings.

20.In this view of the matter, the impugned Judgments are set aside. This criminal revision case is allowed. The revision petitioner is acquitted. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the revision petitioner shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

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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 Judge, Fast Track (Mahila) Court, Karur.

2.The Judicial Magistrate (Fast Track Court)
at Magisterial Level, Karur.

Copy To:- The Section Officer, Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s H.Lakshmi Shankar, Advocate, in SR.No.25081 of 2020.

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10.12.2020

(SSS) CO

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