

**BAIL**

M.S.Bapusan, S/o.Sulaiman is released on Bail vide Court order dated 20/12/2017 made in CRL.MP(MD).No.11519 of 2017 in CRL.RC.(MD).No.941 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl.R.C.(MD)No.941 of 2017

M.S.Bapusan

.. Revision Petitioner/
Appellant/Accused

Vs.

Nelson,

S/o.Kumarakkan,

Secretary of Y-49 Keezmidalam Primary

Agricultural Co-operative Bank Ltd.,

Midalakkadu, Palapallam Post,

Keezhmidalam Village,

Vilavancode Taluk,

Kanyakumari District.

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision petition is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records relating to Judgment passed by the learned Mahila Fast Track Court/Sessions Judge, Nagercoil, dated 26.05.2017 in C.A.No.89 of 2008 confirming the Judgment passed by the learned Principal District Munsif/Judicial Magistrate, Eraniel in C.C.No.55 of 2003 dated 16.06.2008 and set aside the same and allow this revision petition.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : No appearance.

ORDER

This revision petitioner was prosecuted for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.55 of 2003 on the file of the Principal District Munsif, Eraniel, by the respondent herein.

2. The case ended in conviction and sentence. Challenging the same, the petitioner filed C.A.No.89 of 2008 before the Sessions Judge, Nagercoil. Vide Judgment dated 26.05.2017, the Judgment of the trial Court was confirmed and the appeal was dismissed. Challenging the same, this criminal revision case came to be filed.

3. Heard the learned counsel appearing for the petitioner.

4. Though the respondent had been served and his name is also printed in the cause list, there is no appearance on his behalf.



5. The learned counsel appearing for the petitioner informs this Court that he has been told that the complaint is no more. The learned counsel appearing for the petitioner drew my attention to the testimony of P.W.1/complainant.

6. The case of the complainant is that he is the Secretary of Y-49 Keezmidalam Primary Agricultural Co-operative Bank Ltd., Vilavancode Taluk. The accused is said to have purchased gunny bags from the society and towards discharge of the said liability, he had issued a signed blank cheque for a sum of Rs.40,000/-. The accused is said to have agreed to give the said cheque as security. Though the accused promised to pay the entire amount shortly, he failed to honour the undertaking and therefore the complainant as the Secretary of the bank was made to pay the said amount to the society. In order to meet out the same, the complainant had filled up the cheque in question in his name and presented the same for collection. Since it was dishonoured, after completing all the usual formalities, he filed a private complaint.

7. From this, one can easily come to the conclusion that the complaint cheque was not issued in favour of the complainant. It was given only to the society in which the complainant was functioning as a Secretary. The society is not before this Court. It is only the individual who had filed the complaint. The accused examined himself as D.W.1 and he also confirmed the substance of the prosecution. The defence of the accused was that he had paid a sum of Rs.38,000/- in cash and taken the gunny bags. I am not satisfied with the defence of the accused. The accused is giving a false version. If he had paid a sum of Rs.38,000/- in cash and taken the goods, obviously, he would not have left the signed blank cheque in the custody of the Secretary of the society. My conscience is satisfied that the complainant has approached with the true version. But the moral satisfaction of the Court cannot be a ground for sustaining the conviction. The complainant is obliged to establish beyond reasonable doubt that the complaint cheque was given towards discharge of an enforceable legal liability. In this case, the primary liability of the accused was only towards the society and not towards any individual. Therefore, on this sole ground, the Judgments of the Courts below are set aside. This criminal revision case is allowed.

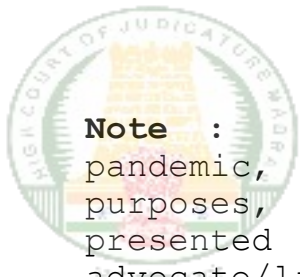
Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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.

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To

1. The Sessions Judge/Mahila Fast Track Court,
Nagercoil.
2. The Principal District Munsif/Judicial Magistrate,
Eraniel.
3. The Section Officer, (2Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.N.Dilip Kumar, Advocate, SR.No.25443 dated 14/12/2020

Crl. R.C. (MD) No. 941 of 2017
11.12.2020

SSS (CO)
KB (01.02.2021) 3P 6C