



BAIL SLIP

The Appellant/Accused namely S.T.S.Jayakumar, Proprietor JKR Spoken English was directed to be released on bail in and by the order of the this court dated 29.04.2015 and made in Crl.M.P.No.1 of 2015 in Crl.R.C.No.407 of 2015 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

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THE HON'BLE MS.JUSTICE R.N.MANJULA

Crl.RC.No.407 of 2015

S.T.S.Jayakumar
Proprietor
JKR Spoken English
No.34/26, Gayathri Towers
2nd Floor, Binny Compound
Tiruppur District

...Petitioner/Accused

Vs.

P.Natarajan

...Respondent/Complainant

Prayer:- This Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C., to set aside the conviction and sentence made in Criminal Appeal No.6 of 2015 dated 27.03.2015 on the file of the 1st Additional District & Sessions Judge, Tiruppur in confirming the judgement made in S.T.C.No.134 of 2012 dated 26.12.2014 on the file of the Judicial Magistrate (FTC), Tiruppur and thus allow the Criminal Revision Petition.

For Petitioner : Mr.C.Gunasekaran

For Respondent : Mr.R.Baskar

ORDER

This Criminal Revision Petition has been preferred challenging the conviction and sentence passed in Criminal Appeal No.6 of 2015 dated 27.03.2015 by the 1st Additional



District & Sessions Judge, Tiruppur, confirming the judgement of the learned Judicial Magistrate (FTC), Tiruppur dated 26.12.2014 passed in S.T.C.No.134 of 2012.

2. The Revision Petitioner is the accused and the respondent is the complainant.

3. The case has arisen out of the issuance of a cheque in favour of the respondent for a sum of Rs.3,00,000/- and when it was presented in the bank for encashment, it was returned as insufficient balance. The respondent/complainant has filed the complaint by stating that the petitioner has executed cheque - Ex.P2 for Rs.3,00,000/- on 06.05.2011 towards the loan amount availed by him from the complainant. On 02.08.2010, the petitioner is said to have executed a promissory note also in favour of the respondent. When the respondent presented the cheque on 06.05.2011 for encashment in his bank, it was returned on 07.05.2011 for want of funds. After sending the statutory notice and complying the legal madates, the respondent has filed the private complaint.

4. On the side of the respondent, respondent is the witness as P.W.1 and Exs.P1 to P23 were marked. On the side of the petitioner, no witness was examined and no document has been marked.

5. At the conclusion of the trial, the learned trial Judge found the accused guilty for the offence under Section 138 of N.I. Act and convicted him by imposing a sentence of 1 year simple imprisonment and a fine of Rs.1,000/- in default to undergo one month simple imprisonment. Aggrieved over that, the petitioner/accused preferred an appeal before the Ist Additional District and Sessions Judge, Tiruppur in C.A.No.6 of 2015 and the First Appellate Court has also confirmed the judgement of the trial Court. Hence, the petitioner has now filed this Criminal Revision Petition challenging the judgement passed in C.A.No.6 of 2015.

6. The learned counsel for the petitioner submitted that his main ground for preferring this revision is that the impugned cheque has been given only by way of security and it is not meant for any legally enforceable liability. It is further submitted that the respondent has misused the cheque issued to him for the purpose of security and filed the criminal case for harrassing the petitioner.

7. The learned counsel for the respondent submitted that the learned trial Judge has rightly appreciated the evidence before him and convicted the accused and the same was rightly confirmed by the First Appellate Court also.



8. Ex.P1, promissory note executed by the petitioner on 02.08.2010 for Rs.3,00,000/- and the cheque issued by him on 06.05.2011 for Rs.3,00,000/- towards its repayment are the two vital documents for the case of the complainant. Though the petitioner had denied the liability initially, he admitted the same through his reply notice - Ex.P23 sent to one Muthusekar, through his counsel. In the said notice, it is stated as under:

My client stated that he didn't borrow any amount from your client at any point of time and he doesn't know about your client before receiving your legal notice dated 17.05.2011, actually my client has borrowed a sum of Rs.4,50,000/- on 05.05.2010 @ 2.5% per annum from P.Natrajan, Kangayam Road, Tiruppur and the same day my client duly signed and gave up - fill up two promissory notes and two cheques to P.Natrajan for the collateral purpose of the said loan amount. The cheque Numbers are 1. 015026, 2. 015027, My client has promised him that when he pays on 31st July 2011, my client will repay a sum of Rs.4,50,000/- + 1,50,000 = 6,00,000. But now P.Natrajan has misused my client's cheques and documents through your client.

9. The above averments of the notice shows that PW1 was in the habit of having monetary transaction with the respondent and the cheque was also issued by him towards the discharge of the loan availed by him. As per sec.139 of N.I Act, when the execution of the cheque is not denied, the initial presumption as to its liability goes in favour of the holder of the cheque. Sec. 139 reads as under:-

"139. Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability. "

10. Once it is proved by the respondent/complainant before the Court that the cheque has been executed by the petitioner, it can be presumed that it was given for discharging a legally enforceable debt, unless the contrary is proved. And the standard of proof for such rebuttal need not be proof beyond reasonable doubt. It is sufficient if the accused could prove the contrary through preponderance of probabilities.

11. But a mere suggestion put to P.W.1 that the cheque which was not issued towards the discharge of any liability alone cannot be taken as rebuttal proof. The learned counsel for the



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respondent in support of his contention invited the attention of this Court to the judgment reported in 2018 SCC Online Mad 3990 [K.Muthusekar Vs. S.T.S.Jayakumar] that if the complainant establishes a prima facie case, he is entitled to the statutory presumption under Section 138 of N.I. Act. In the said judgement, it is held as below:

".....52. Here in the case in hand, first of all, it is not the case of acquittal by the trial Court, it is a conviction. However the first appellate Court while reversing the said conviction has given its finding, which this Court finds that factually wrong. This Court also finds that, the first appellate Court has not at all considered the statutory presumption under Sections 118 and 139 of NI Act and no evidences absolutely whatsoever from the accused side to bring an acceptable rebuttal of such statutory presumption. Therefore the case cited by the accused side, i.e., C.Antony's case would not help the accused and in fact it strengthen the case of the complainant in the present case in hand.

54. Here in the case in hand, on facts, with support of evidence, the complainant was able to establish the prima facie case that, statutory presumption that there had been a debt, which is legally enforceable, for which cheque in question was issued supported by pro-note executed by the accused.

55. In the absence of any denial of the signature of the accused both in the pro-note as well as in the cheque, i.e., Ex.P.1 and Ex.P.2, the execution of those Ex.P.1 and Ex.P.2 can be safely accepted in favour of the complainant. Therefore in this case the statutory presumption under Sections 118 and 139 very well had been created or established by the complainant, whereas the said presumption, even though a rebuttable presumption, has not been shattered by way of acceptable rebuttal on the side of the accused. In fact the accused has not brought any evidence either orally or by way of documents."

12. In the absence of any contrary proof, the initial presumption that will become conclusive. Hence, I do not find any reason to interfere with the judgement of the Courts below where the accused was found guilty for the offence under Section 138 of N.I. Act.

In the result, this Criminal Revision Petition is dismissed and the judgement dated 27.03.2015 passed in Criminal Appeal



No.6 of 2015 by the 1st Additional District & Sessions Judge, Tiruppur is confirmed. The trial Court is directed to secure the accused and send him to prison for undergoing incarceration.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional District & Sessions Judge,
Tiruppur.
2. The Judicial Magistrate (FTC),
Tiruppur.
3. The Chief Judicial Magistrate,
Tiruppur.

+1cc to Mr.I.Abrar Md. Abdullah, Advocate, S.R.No.58861

+2cc to Mr.R.Baskar, Advocate, S.R.No.58821

Cr1.RC.No.407 of 2015

PA(CO)
RGA(07/12/2021)