



BAIL SLIP

The Petitioner / Accused viz., D.Ezhilarasi aged 56 years W/o.Sekar was directed to be released on bail vide order in M.P.Nos.1 and 3 of 2015 in Crl.R.C.No.591 of 2015 dated 19.06.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.591 of 2015

D.Ezhilarasi

...Petitioner/Single accused

Vs.

S.Periasamy

...Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 & 401 of Cr.P.C., against the judgment of the learned District and Sessions Judge, Salem, made in Crl.A.No.55 of 2014, dated 31.03.2015, confirming the conviction and sentence passed by the trial Court in C.C.No.91 of 2013, by the learned Judicial Magistrate, Fast Track Court, Omalur, Salem District, dated 24.03.2014.

For Petitioner : Mr.V.Murugesan

For Respondent : Mr.M.Devaraj

O R D E R

(This case has been heard through video conference)

The convicted single accused is the revision petitioner herein.

2.The respondent herein has filed a private complaint before the learned Judicial Magistrate, Fast Track Court, Omalur, on the ground that he has borrowed a sum of Rs.3,00,000/- and issued post dated cheque/Ex.P1 and on presentation of the cheque, it was returned as insufficient funds. Thereafter, the complainant had issued a legal notice/Ex.P3 to the accused and



its acknowledgment/Ex.P4, the accused has not given any reply. Consequently, the complainant has filed a case in C.C.No.91 of 2013, before the Court of Judicial Magistrate, Fast Track Court, Omalur, Salem District.

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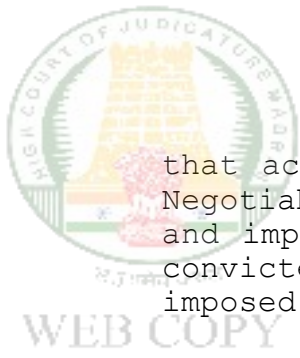
3. During the trial, the accused has taken defence that a chit was conducted by the respondent/complainant, in which the accused was also participated and thereafter for the chit amount by way of security present cheque was given as a unfilled blank cheque singed by her and the same was misused. Even after the statement of the accounts, the case of the defendant was not probablised. Accordingly, the learned Judicial Magistrate had convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment to the pay a fine of Rs.3,00,000/- within a period of one month. Against the said conviction and sentence, the accused as preferred an appeal in C.A.No.55 of 2014, before the learned District and Sessions Judge, Salem. The learned Judge has confirmed the said conviction and sentence. Hence, the present Criminal Revision Case has been preferred by the accused..

4. Heard Mr. Murugesan, learned counsel for the petitioner and Mr. M. Devaraj, learned counsel for the respondent and perused the materials placed on record.

5. Mr. Murugesan, learned counsel for the revision petitioner would contend that at the time of issuance of cheque it was a unfilled blank singed cheque, issued as security for the chit amount which was taken by the revision petitioner/accused and by way of security only the cheque was given. From the records it is seen that PW1 in the cross examination has denied the same.

6. Since, the accused had admitted the signature in Ex.P1/cheque, both the Courts below have rightly come to the conclusion that the complaint is entitled for presumption under Section 139 of Negotiable Instruments Act. Now, it is the duty of the accused/revision petitioner to rebut the same by clear and cogent evidence to the level of preponderance of probability. In an attempt, she may either chose to enter into the witness box and depose the case or to file necessary supportive evidence either oral or documentary. For the reasons best known the accused neither entered into the witness box nor adduced any oral or documentary evidence. She chosen to rely only upon the answer elicited in the cross examination of PW1. The suggestion put to PW1 was duly denied and PW1 specifically denied that ... one of any chit business.

7. In the absence of any positive evidence to probablise the suggestive case, both the Courts below have concurrently held



that accused had committed the offence under Section 138 of the Negotiable Instruments Act and accordingly laid the conviction and imposed the sentence as stated supra. Since the age of the convicted accused is 56 years now, the sentence of six months imposed by both the Courts is reduced to three months.

8. With the above modification this Criminal Revision Case stands partly allowed to the limited extent as indicated above in respect of sentence only.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The District and Sessions Judge,
Salem.
2. The Judicial Magistrate,
Fast Track Court,
Omalur,
Salem District.
3. The Chief Judicial Magistrate,
Salem.

+1cc to Mr. Devaraj, Advocate, S.R.No.47056

Cr1.R.C.No.591 of 2015

AK-II (CO)
RGA (06/10/2021)