



Bail Slip

The Petitioner/Accused Viz., M.Abdul Aziz, son of Hussain Mohammed was directed to be released on bail vide order dated 07/07/2015 in Crl.M.P No.1/2015 in Crl.R.C.No.657/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2021

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Crl.R.C.No.657 of 2015

M.Abdul Aziz

... Petitioner

Vs.

1.P.Badri Balaji
2.The Public Prosecutor,
Erode.

... Respondent

PRAYER : Criminal Revision has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment in C.A.No.71 of 2013 on the file of the Principal Sessions Court, Erode confirming the judgment dated 11.09.2013 passed in S.T.C.No.268/2012 on the file of the Judicial Magistrate, Fast Track Court (Magistrial Level) No.1, Erode.

For Petitioner : Mr.I.C.Vasudevan

For R1 : Mr.I.Sidharthan

For R2 : Mr.A.Gopinath
Government Advocate(Crl.Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment dated 10.09.2014 passed by the learned Principal Sessions Judge, Erode in C.A.No.71 of 2013, confirming the judgment dated 11.09.2013 passed in S.T.C.No.8 of 2012 on the file of the Judicial Magistrate Fast Track Court (Magistrial Level) No.1, Erode.

2. The revision petitioner is the accused and the 1st respondent is the defacto-complainant. A private complaint has



been preferred by the defacto-complainant against the revision petitioner under Section 200 Cr.P.C., before the Judicial Magistrate Fast Track Court (Magistrial Level) No.1, Erode on the allegations that the accused had borrowed a sum of Rs.4,50,000/- from the complainant on 15.12.2011 for his urgent needs and issued a post dated cheque dated 15.02.2012 for a sum of Rs.4,50,000/- for discharging the loan availed by him. As per the request of the revision petitioner, the defacto-complainant presented the cheque for encashment on 15.02.2012 and it got returned with an endorsement "insufficient funds" on 17.02.2012. After issuing the mandatory pre litigation notice and complying with the due procedure, the defacto-complainant has filed the complaint before the Magistrate for punishing the accused for the offence committed under Section 138 of Negotiable Instruments Act.

3. After the case was taken on file and after giving an opportunity to the revision petitioner/accused, the case was tried. On the side of the defacto-complainant one witness was examined as PW.1 and 4 documents were marked as Ex.P.1 to Ex.P.4. On the side of the accused, two witnesses were examined as DW.1 and DW.2 and Ex.D.1 was marked.

4. After conducting the elaborate trial and on perusing the materials placed before the Court, the learned Judicial Magistrate found the accused guilty under Section 138 of Negotiable Instruments Act. Thereby, convicted and sentenced the accused to undergo Simple Imprisonment for a period of 6 months and imposed a fine of Rs.5,000/-; in default, to undergo 30 days Simple Imprisonment.

5. The revision petitioner has challenged the above judgment of the learned Magistrate by preferring an appeal in C.A.No.71 of 2013 and the same was also dismissed. Aggrieved over the said dismissal, the revision petitioner/accused has preferred this revision case.

6. Heard the learned counsel for the revision petitioner/accused and the learned counsel for the respondents.

7. The learned counsel for the revision petitioner submitted that the petitioner/accused had not availed any loan amount as alleged by the respondent/defacto-complainant. He further submitted that on the alleged date of occurrence i.e., 15.12.2011, the revision petitioner was in Madurai and the alleged transaction between him and the defacto-complainant did not take place at all; he has further submitted that the defacto-complainant has not proved the legally enforceable debt borne out by the impugned cheque / document and the accused has to be acquitted.



8. The learned counsel for the respondent submitted that the Courts below had appreciated the evidence on record in correct perspective. The revision petitioner/accused has not proved his defence of alibi and hence the revision case has to be dismissed.

9. Points for consideration:

Whether the finding and judgment of the lower appellate Court suffer from any unfairness, impropriety or illegality?.

10. The execution of the cheque was not in dispute. The only contention of the revision petitioner is that he did not avail the loan amount of Rs.4,50,000/- as claimed by the defacto-complainant and hence the cheque in question is not supported by any consideration and hence it is not legally enforceable.

11. It is needless to state that as per Section 138 of the Negotiable Instruments Act, once the execution of the cheque is admitted by the executor and his signature on the cheque is not disputed, the holder of the cheque has got the initial presumption in favour that the cheque is issued only for a legally enforceable debt. In such a context, the revision petitioner/accused has to rebut the initial presumption by producing any contrary proof before the Court. In the present case on hand, the revision petitioner had taken the stand that on the day when the understanding between the parties was reduced into compromise agreement (Ex.D.1), which preceeded the impugned cheque, the revision petitioner was not at all in station and he was in Madurai.

12. The learned trial Judge has dealt with the above defence and chosen to reject the defence on the ground that the accused did not rebut the case of the defacto complainant by substantiating his defence. The learned trial Judge observed that the accused had taken the defence of alibi only out of imagination and after the case was filed before this Court, he has extracted the contents of the Ex.D1 and the date of seal on the non judicial stamp paper to show that the same was procured as early as on 02.12.2011, but utilized on 15.12.2011. Whatever may be the events that had taken place for the culmination of the alleged compromise agreement dated 15.12.2011, the fact remains that the accused had executed the cheque on 15.12.2011 by affixing his signature. He did not question the financial status of the defacto-complainant but he has only stated that he did not avail the said loan amount from the defacto-complainant. Except the self asserting statement of the petitioner, he has not disproved the case of the complainant to the satisfaction of the Court and especially that he was not at all available in



station and the complaint is a total falsehood. When the accused fails to rebut the initial presumption arising under Section 138 of N.I.Act., it will become conclusive with the aid of other substantiative and documentary evidence given by the complainant. In view of the above reason, I do not find any reason for interference.

13. In the result, the Criminal Revision Case is dismissed and the judgment of the learned Judicial Magistrate, Fast Track Court (Magistrial Level) No.1, Erode, dated 11.09.2013 passed in S.T.C.No.268 of 2012 stands confirmed. The trial Court is directed to issue NBW to secure the accused and commit him to prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl
To

- 1.The Principal Sessions Court,
Erode.
- 2.The Judicial Magistrate,
Fast Track Court (Magistrial Level) No.1,
Erode.
- 3.The Public Prosecutor,
Erode.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.I.Siddharthan, Advocate Sr.62178

Cr1.R.C.No.657 of 2015

pmk[co]
srg 02/02/2022