



BAIL SLIP
(Cr1 RC.763 of 2015)

The Petitioner/Accused Viz V.Ashok Kumar, S/O, Viswanathan, aged 39 years was directed to be released on bail vide order dated 12.08.2015 in MP.1 of 2015 in Cr1.RC.763 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.763 of 2015

Ashok Kumar

... Petitioner

.. Vs ..

Mr.M.S.Vijayakumar

....Respondent

Prayer :- Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code, to set aside the judgment dated 23.01.2013 made in S.T.C.No.2767 of 2008 on the file of the Judicial Magistrate No.I of Tirupur, and as confirmed in judgment dated 25.09.2013 in C.A.No.13 of 2013 on the file of the Principal Sessions Judge of Tirupur.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.K.Vignesh Karthick

O R D E R

The convicted sole accused is the revision petitioner herein.



2. This revision petition has been filed against the order of the learned Principal Sessions Judge, Tiruppur, in C.A.No.13 of 2013 dated 25.09.2013 confirming the conviction and sentence passed by the learned District Judicial Magistrate, Tiruppur, in S.T.C.No.2767 of 2008 dated 23.01.2013.

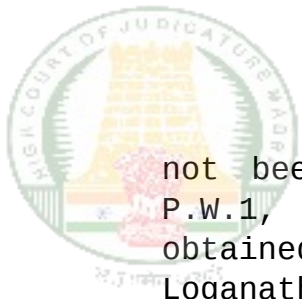
3. The respondent herein filed a private complaint against the accused herein by stating that the accused obtained a loan of Rs.2,00,000/- from him on 10.01.2008, that he executed a promissory note for the said amount agreeing to repay the same with interest at 12% p.a., that after repeated demands for repayment he issued two cheques dated 20.05.2008 and 20.06.2008 respectively for Rs.1,00,000/- each, that the cheques were presented for collection on 23.06.2008, that they were returned unpaid on 24.06.2008 for the reason "account closed", that despite notice demanding payment the accused did not pay the amount or send any reply to the notice of demand and that thereby he has committed an offence punishable under section 138 of the Negotiable Instruments Act.

4. After observing formalities, trial Court laid the conviction appeal was dismissed.

5. Heard the learned counsel for the respondent and the learned counsel for the revision petitioner.

6. The case of the private complainant is that the accused obtained a loan of Rs.2,00,000/- from him on 10.01.2008, that he executed a promissory note for the said amount agreeing to repay the same with interest at 12% p.a., that after repeated demands for repayment he issued two cheques dated 20.05.2008 and 20.06.2008 respectively for Rs.1,00,000/- each, that the cheque were presented for collection on 23.06.2008, that they were returned unpaid on 24.06.2008 for the reason "account closed", that despite notice demanding payment the accused did not pay the amount or send any reply to the notice of demand and that thereby he has committed an offence punishable under Section 138 of the Negotiable Instruments Act.

7. During the trial, the revision petitioner/accused has filed the theory that the accused's side has stated that he did not obtain the loan from the complainant, did not execute promissory note and did not issue the two cheques on 20.05.2008. The signatures in the promissory note and the two cheques have



not been denied by the accused. During cross examination of P.W.1, a suggestion has been put to him that the accused obtained a loan of Rs.50,000/- from his maternal uncle Loganathan in the year 2004, that the promissory note and the two cheques concerned in this case (Exs.P1 to P3) were handed over by him in respect of that loan, that after discharging the said loan the accused did not get back these documents from Loganathan and that loan the accused did not get back these documents from Loganathan and that since there were some misunderstandings between the accused and Loganathan, the said Loganathan has handed over the said documents to the complainant and this case has been filed.

8. In order to substantiate the suggestive case, he has examined himself as D.W.1 neither during cross examination of P.W.1 nor in his evidence as D.W.1, the accused has not mentioned the date or month when he obtained the alleged loan of Rs.50,000/- from Loganathan and when he discharged that loan. Further for Ex.P6 notice issued by the complainant demanding payment, the accused did not send any reply even though he has received the said notice.

9. The accused has admitted the signature in Ex.P1 pronote and P2 cheque and P3 cheque and hence the trial Court has rightly come to the conclusion that the private complaint is entitled for presumption under Section 139 of the Negotiable Instruments Act.

10. In order to rebut presumption though the accused has entered examined himself as D.W.1 and marked Ex. D2 and D3. In view of Ex.P1, the pronote and the oral evidence of P.W.2, the scribe of the pro-note and evidence of P.W.3, who had witnessed handing over the money and handing over by the cheque by the accused, both the Courts below has rightly conclusion that there is a passing of consideration for the issuance of the cheque. Since earlier there was a transaction and which was reduced in writing under Ex.P1 pronote for the pre-existing liability under Ex.P1, P2 and P3 cheques have been given by the accused.

11. To rebut the presumption, the accused has made an attempt during the cross-examination P.W.1, the accused has not even deposed that he has taken any action against the said to have been handed over by him to Loganathan as security, after



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the alleged discharge of the loan. There is no document to prove that he has taken any such action against Loganathan for the return of those documents. So, in view of the above circumstances, the case of the accused as above cannot be accepted.

12. As stated supra, the accused has even disclosed that he has not taken any steps against the maternal uncle for the return of execution of promissory note by the accused at the time of obtaining loan from the complainant has been duly substantiated the evidence of P.W.2 Rameshkumar also who is said to have prepared the promissory note. P.W.1 has clearly deposed that he has got the necessary means to lend such an amount and his evidence is that since he is doing business of buying and selling cars, he will always have two or three lakhs as cash in hand. So, his means is also proved.

13. Ex.P1 pronote by the accused at the time of the obtaining the loan from the complainant has been duly substantiated by the evidence of P.W.1 Ramesh which was said to have he preferred promissory note. So also P.W.1 has clearly deposed that he has no necessary means to lend such amount since he was doing business in selling and buying cars and from the cash in hand he has handed over the amounts.

14. Considering the suggestive case of the returns in the income evidence that was adduced on the side of the accused, both the Courts below have rightly come to the conclusion that in view of the presumption under Section 139 of the Negotiable Instruments Act, there is a presumption in support of the Ex.P3 cheque and based upon the oral evidence of P.W.2 has to be passed of the consideration of P.W.1 pronote and execution of the cheque in the presence of P.W.3 was accepted by the both the courts below. The concurrent finding rendered by both the Courts below does not suffer from any illegality or irregularity warranting interference at this revisional jurisdiction.

15. Though a suggestive case has been preferred by the defence adduced by the independent evidence, he miserably failed to probablize the suggestive case. In the absence of any steps being taken to prosecute against the Loganathan maternal uncle for the return of the cheques and pronote and also the evidence of P.W.2 and P.W.3, both the Courts below have rightly come to



the conclusion that the accused/revision petitioner has filed to probablize the suggestive case consequently held that he has committed the offence under Section 138 of the Negotiable Instruments Act. Such a well considered finding does not suffer from any perversity seeking interference of this Court in revision jurisdiction.

16. Accordingly, the conviction sentence under Section 138 of N.I Act is confirmed. On the point of quantum of sentence, I find that after taking note of the entire circumstances and plea raised by the revision petitioner, the sentence of imprisonment of one year is reduced to six months and all other aspects, the same is confirmed and hence except in respect of sentence, this Criminal Revision Petition is partly allowed to the limited extent indicated above.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I of Tirupur
2. The Principal Sessions Judge of Tirupur.

+1CC to M/s.J.Franklin, Advocate, SR.No. 47257

Cr1.R.C.No.763 of 2015

GPL(CO)
B.VC (01/11/2021)