



BAIL SLIP

The Petitioner / Accused namely Mariyamma W/o.P.Maharajan was released on bail on 20.08.2015 in CrI.M.P.No.1/2015 in CrI.R.C.No.870/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.870 of 2015
and M.P.Nos.1 & 2 of 2015

Mariyamma ... Petitioner/Appellant/Accused

Vs.

A.R.Nagarajan ... Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397(i) and 401 of Cr.P.C., against the judgment dated 04.08.2015, passed by the learned III Additional Sessions Judge, Coimbatore, in C.A.No.25 of 2014 confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court Magisterial Level - II, Coimbatore, Fast Track on 05.02.2014, in STC.No.104 of 2012.

For Petitioner : Mr.A.Saranraj

For Respondent : Mr.J.Franklin

O R D E R

The convicted accused is the revision petitioner herein.

2.The respondent/complainant has filed a case in STC.No.104 of 2012, before the learned Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, arising Ex.P6/Cheque bearing No.086098 for a sum of Rs.4,31,000/-. After observing legal formalities, the Trial Court has convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.2,000/- in default to



undergo one month simple imprisonment. Aggrieved against the same, the accused has preferred Criminal Appeal No. 25 of 2014, before the learned III Additional Sessions Judge, Coimbatore. By an order dated 04.08.2015, the learned Judge has dismissed the same and hence, the Criminal Revision Case.

3. Heard both the learned counsels and perused the materials placed on record.

4. The learned counsel for the revision petitioner/accused would contend that the relationship between the parties is landlord and tenant and in such relationship, the revision petitioner/accused as a tenant has given these cheques and pro-notes for availing bank loan by the landlord and the same was misused and further, he would contend that the respondent herein/complainant has obtained three alleged pro-notes marked as Ex.P1, P2 & P3 in the trial Court charging exorbitant interest on the alleged principal amount which is contrary to the provisions of Tamil Nadu Money lenders Act, 1957. The alleged cheque is for a sum of Rs.4,31,000/- being principal and interest which is due under the alleged three pro-notes.

5. Further, he would contend that there was another complaint, in which there is non mentioning of the present legal notice and hence, seeks to set aside the conviction and sentence imposed against him.

6. Mr. J. Franklin, learned counsel appearing for the respondent herein/complainant would contend that a new plea has been taken by the revision petitioner/accused and no such suggestion was put to PW1 while he was in witness box. In view of the statutory presumption, the respondent herein/complainant is bound to succeed as the revision petitioner/accused has failed to probablize the suggestive case. Consequently, having failed in rebuttal in presumption by the accused, the order passed by both the Courts below is sustainable.

7. The respondent herein/complainant as PW1 has deposed that the revision petitioner herein/accused had borrowed a sum of Rs.2,50,000/- from the complainant on various dates and that the accused had paid Rs.7,500/- each on 20.11.2007 and 17.06.2010 towards interest for the amount borrowed on 02.03.2005. In fact, on the side of the complainant one Subramanian was examined as PW2. It is his evidence that he stood as a witness for the borrowal by the accused on all the three occasions and that the accused executed pronotes on the said dates. He has also stated during his evidence that he had witnessed the execution of pronotes besides signing them as a witness. He has also categorically stated that the accused paid Rs.7,500/- on 17.06.2010 towards interest for the amount borrowed under the



first pronote dated 02.03.2005. He has also confirmed that he signed as a witness for the endorsement made in the first pronote on 17.06.2010 regarding the payment of Rs.7,500/-. One Nataraj P.W.3 had confirmed that in his presence the accused had paid Rs.7,500/- on 20.11.2007 towards interest for the amount that was borrowed by the accused on 02.03.2005 and also that the accused made an endorsement on the back side of the pronote dated 02.03.2005 which was witnessed by him. It is his further evidence that he signed the said endorsement as a witness. A perusal of the cross examination of PW1, PW2 and PW3 reveal that nothing has been elicited by the accused to doubt the case of the complainant.

8. On the side of the defence DW1, DW2 & DW3 were examined.

9. DW2 evidence is only hearsay evidence and she could depose that the revision petitioner herein/accused informed to her that the respondent herein/complainant wanted blank cheques for the purpose of providing security to the loan to be availed by the complainant. The evidence of DW3 has not revealed anything to support of the case of the accused assumes significance.

10. After perusing the oral evidence of PW1, PW2 & PW3, being the attestors of Exs.P1, P2 & P3, Exs.P4 & P5/endorsements made in the said promissory note dated 02.03.2005, and thus when the accused has not disputed the signature contained in Ex.P6/cheque and the same is issued from the account of the accused, both the Courts below have rightly come to the conclusion that the complainant is entitled to statutory presumption under Section 139 of the Negotiable Instruments Act. Consequently, it is for the revision petitioner herein/accused to rebut the said presumption.

11. Thereafter, to rebut the presumption, on the side of the revision petitioner herein/accused, she examined herself was examined as DW1, one Nirmala was examined as DW2, one P.Maharajan was examined as DW3, one Sairam Prasad was examined as DW4. In the documentary evidence viz., Exs.P1, P2 & P3, at one place the name of the revision petitioner herein/accused was mentioned as Marriammal instead of Marriamma.

12. According to the defence, the complainant and the accused were landlord and tenant. In order to avail loan, the complainant had asked the accused to be a surety for the loan to be obtained by the complainant and for that purpose the Bank account was opened by the complainant in the name of the accused. In support thereto, DW4/Bank Official was examined, who had deposed regarding Ex.D1/account opening form of the accused with United Bank of India, wherein it was introduced that the complainant had introduced the accused to the bank.



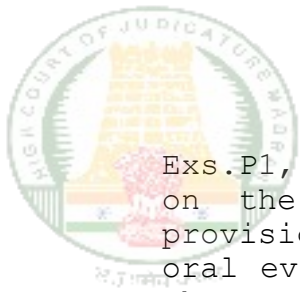
13.The next level of presumption is that the complainant/respondent herein had obtained documents from the accused for getting the loan from bank. In this regard the revision petitioner herein/accused has not summoned any Bank Official to depose the same as to whether, the respondent herein/complainant had obtained any bank loan based on the documents alleged to have been given by the accused and whether she stood surety, the defence has not probablized incident with regard to as she failed to produce any evidence in support of her version. It is always open to the defence to summon bank officials to substantiate their plea in the absence of any positive evidence. The Trial Court has disbelieved the same and the Lower Appellate Court has confirmed the same.

14.No doubt it is true that statutory presumption under Section 139 of the Negotiable Instructions Act is rebuttable and the standard of evidence that has required is that rebut statutory presumption is only preponderance of probability. In the absence of any document from the Bank or from any loan transaction said to have been availed by the respondent herein/complainant for which she stood as surety, the finding rendered by the Trial Court as well as the Lower Appellate Court can not be interfered with.

15.Yet another contention is that there is another complaint in CC.No.13 of 2013 wherein, non mentioning of the legal notice was sought to be projected as a fraud. Non mentioning of other legal proceedings in the subsequent legal proceedings are fatal to the case of the prosecution. Further, no suggestion was put to PW1 during the cross examination and hence, I find that it is only an after thought at the revision stage.

16.Further, Mr.Saranraj, learned counsel for the revision petitioner would contend that in the first legal notice dated 02.09.2011, namely, the subject matter of the present revision nothing is mentioned about the transaction as stated in the second legal notice, dated 16.11.2011. Based upon which another complaint was filed in STC.No.101 of 2011, before the learned Judicial Magistrate Court No.I, Coimbatore. As observed earlier non mentioning of the second transaction in the first legal notice dated 02.09.2011, can be used by the revision petitioner herein/accused to her advantage in the second complaint said to be pending before the learned Judicial Magistrate No.1, Coimbatore, is not relevant for in this complaint and such finding rendered by the Lower Appellate Court appears to be proper and the same does not require any interpretation at this revision stage.

17.It is seen from the grounds of the revision that the respondent herein obtained three alleged pro-note marked as



Exs.P1, P2 & P3 in the Trial Court charging exorbitant interest on the alleged principal amount, the same is contrary to provisions of the Tamil Nadu Money Lenders Act, 1957, in the oral evidence PW1, PW2, PW3 clearly demonstrated the same before the Court. The evidence of PW2 and the endorsement made therein has been spoken to by PW3. Issuance of cheques from the account of the accused and the signature is not being disputed on the alleged cheques for legally enforceable debt. However, based upon Exs.P1 to P3/promissory notes which has been clearly demonstrated before the Court, the above contention raised at the revision stage does not alter the position.

18.In this view of the matter, this Court finds that there is no merits in the revision and the order passed by both the Courts below does not suffer from any illegality or irregularity warranting interference. Accordingly, this Criminal Revision Case stands dismissed. The order passed by the learned III Additional Sessions Judge, Coimbatore, in C.A.No.25 of 2014, dated 04.08.2015, by confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court Magisterial Level - II, Coimbatore, in STC.No.104 of 2012, on 05.02.2014, is hereby confirmed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional Sessions Judge, Coimbatore.

2.The Judicial Magistrate,
Fast Track Court Magisterial Level - II, Coimbatore.

Copy to :

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

+1cc to Mr.A.Saranraj, Advocate Sr No.46798
+1cc to Mr.J.Franklin, Advocate Sr No.46194

CrI.R.C.No.870 of 2015
and M.P.Nos.1 & 2 of 2015

PVS (CO)
PR (18/10/2021)