



Bail Slip

The Petitioner/Accused, viz., K. Jalandararaju, S/o. Krishnasamy, male, aged about 60/2015 was released on bail vide order of this Court dated 21.08.2015 made in MP.No.1/2015 and CrI.R.C.No.878/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.878 of 2015

K. Jalandararaju

...Petitioner/Appellant
Accused

Vs.

R. Chandran

...Respondent/Respondent
Complainant

PRAYER : Petition filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the conviction and sentence passed in C.A.No.31 of 2014 on the file of the III Additional District Cum Sessions Court, Salem confirming the conviction made in S.T.C.523/2007 dated 30.01.2014.

For Petitioner : Mr. A. Esakkiappan

For Respondent : Mr. R. Marudhachalamoorthy

O R D E R

The matter is heard through "Video Conference".

2. This criminal revision case is filed against the judgment in C.A.No.31 of 2014 dated 31.03.2015 passed by the III Additional District cum Sessions Court, Salem confirming the order made in S.T.C.No.523 of 2007 dated 30.01.2014 on the file of the Judicial Magistrate IV, Salem.

3. The convicted accused is the revision petitioner herein. The petitioner was arrayed as an accused for the alleged offences under Section 138 of the Negotiable Instruments Act, by the respondent herein.



4. The case of the respondent is that

(a) the petitioner borrowed a sum of Rs.5,00,000/- on 10.12.2006 from the respondent as a hand loan and the petitioner on demand issued a cheque of State Bank of India, Salem, Steel Plant Campus Branch, dated 07.02.2007 for a sum of Rs.5,00,000/- to the respondent for his debt. The respondent presented the cheque before the Punjab National Bank, Shevapet, Salem, for collection, which was dishonored with an endorsement as "Insufficient Funds". On 15.02.2007 the respondent issued notice and the petitioner received the same and did not send any reply to the notice and hence the complaint.

(b) The learned Judicial Magistrate No.IV, Salem failed to appreciate the evidence in its proper perspective and therefore convicted the petitioner under Section 138 of Negotiable Instruments Act to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default, simple imprisonment for one month. Aggrieved over the same, the petitioner preferred an appeal in C.A.No.31 of 2014 on the file of III Additional District cum Sessions Judge, Salem.

5. The learned counsel for the revision petitioner would contend that there is a contradiction with regard to the date of issuance, date of borrowal, date of issuance of the cheque, issuance of legal notice and non issuance of reply notice cannot be a ground to accept the private complaint and there is no proof regarding the financial capacity of the private complainant to lend a sum of Rs.5,00,000/-.

6. Per contra, the learned counsel for the respondent / private complainant would contend that the signature in the cheque was admitted during the cross examination of P.W.1 and in the absence of any dispute with regard to the signature, private complainant is entitled for statutory presumption, under Section 139 of Negotiable Instruments Act. Further, to rebut the presumption, the the accused revision/petitioner has not probabilsed the case and not chosen to examine Papathi with whom he alleged to have given the cheque.

7. Heard both sides and perused the records.

8. The case of the respondent/private complainant is that the revision petitioner had borrowed Rs.5,00,000/- on 10.12.2006 and issued cheque on 07.06.2007 and the same was deposited on 10.02.2007 and returned on 13.02.2007. Thereafter, after observing the formalities he had filed the above S.T.C. In support of the private complaint, he has examined himself as P.W.1 and other person is examined as P.W.2 and marked Exs.P1 to



P5. To probabilise the suggestive case, the accused has examined as R.W.1 and R.W.2/Logambal, who is the sister-in-law of the petitioner herein, who is working in Electricity Board Department along with one Papathi.

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9. On evidence of P.W.1 admission with the documentary evidence of P1 to P4 and also the cross examination, this Court finds that the signature found in the cheque is not disputed. Cheque is issued from the account of the petitioner herein. On such deposit, the same was returned for the reason "Insufficient funds". Hence, both the Courts below had rightly come to the conclusion that the private complainant/respondent is entitled for presumption under Section 139 of Negotiable Instruments Act. The said presumption is only a rebuttable presumption.

10. The suggestive case of the revision petitioner-accused is that he had borrowed the amount from one Papathi and gave a cheque to the Papathi, who is working in Electricity Board Department along with R.W.2 / Logambal and the cheque was misused and presented. In this connection, the revision petitioner has examined R.W.2/Logambal, to support the case of the accused.

11. During the cross examination of the Logambal, she had categorically admitted that she is not aware of the cheque number issued to the said Papathi. Admittedly, Logambal, Papathi and accused are working in the Electricity Board Department. When the revision petitioner has come forward with the specific case that the cheque was issued to Papathi, by him has been misused and presented as if, it was issued to the petitioner, the burden is upon him to prove the cheque by way of probabilising the same. However, the evidence of R.W.2 does not lend the support to the extent possible.

12. In view of the admission in the cross examination that she is not aware of the cheque number issued to the said Papathi. Both the Courts below have rightly come to the conclusion that the suggestive case of the defence was not probabilised to the extent of legal presumption. Accordingly, negated the said contention.

13. In view of the admission of R.W.2 as to the cheque in issue, this Court finds that the finding rendered by both the Courts below does not suffer from any irregularity or illegality or warranting interference. Furthermore, with regard to the suggestive case, there was no reply in respect to the stand that the cheque was originally intended for the purpose of repaying Papathi, was not taken as evidence from that point of time, this Court is conscious of the matter, merely because of the fact that non reply do not lead to conclusion that the contents of



the lawyer notice of the judgment reported in C.T.Devaraja, Proprietor of Jayalakshmi Industries, and also of 'Vli Ambu' a Tamil Weekly T.Nagar Madras In re. reported in (2008) 8 M.L.J, 862. However, the non reply of notice with regard to the suggestive case support with the answer elicited in the cross examination R.W.2.

14. Both the Courts below have rightly come to the conclusion that the accused has not probabalise the suggestive case. Consequently, he has not rebutted the presumption. In the absence of discharge of orders of Court to rebut the presumption, this case has failed.

15. In this view of the matter, I do not find any merits in this case. Accordingly, this criminal revision case is partly allowed to the extent indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AT

To

1. The III Additional District Cum Sessions Court,
Salem.
2. The Judicial Magistrate No.IV,
Salem.
3. The Superintendent of Police,
Central Prison,
Coimbatore.

Copy to

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

+1cc to Mr.K.S.Karthik Raja, Advocate, Sr.37313

Cr1.R.C.No.878 of 2015

NR[co]
NSK 17/09/2021