BAIL SLIP

The appellant/accused namely P.Selvaraj S/o.Perumal was directed to be released on bail in and by the order of this Court dated 29.09.2016 and made in Crl.M.P.No.10286 of 2016 in Crl.R.C.No.1163/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1163 of 2016

P.Selvaraj ... Petitioner/Accused

vs.

K.Subramaniam ... Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., seeking to call for the records in C.A.No.53 of 2014, dated 19.07.2016, on the file of the learned Principal Sessions Judge, Namakkal confirming the Judgment passed by the Judicial Magistrate [Fast Track Court], Tiruchengode, in S.T.C.No.273 of 2012 dated 26.06.2014 and to set aside the same.

For Petitioner : Mr.S.Viswanathan
For M/s.Dass and Viswa Associates

For Respondent : M/s.V.Valarmathi,
Legal Aid Counsel

O R D E R

(This case has been heard through video conference)

The private complaint/respondent herein has filed a case in STC.No.273 of 2012, before the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Tiruchengode, based upon Exs.P1 & P2/Cheques.

2.Originally the case was filed in C.C.No.562 of 2005, before the learned Judicial Magistrate, Tiruchengode, on the ground that on 07.05.2005, the accused had borrowed a sum of Rs.1,14,000/- (Rupees one lakh fourteen thousand only) from the complainant and to discharge the liability the revision petitioner herein/accused had issued two cheques, both were drawn on "The Dhanalakshmi Bank Ltd, Erode Branch, one cheque bearing No.7957072, dated 18.06.2005 for a sum of Rs.50,000/-, which was marked as Ex.P2 and another cheque bearing No.8002608, dated 07.06.2005 for a sum of Rs.64,000/-, which was marked as Ex.P1, in favour of the complainant.

3.The respondent herein/complainant had presented the above said two cheques for encashment through "State Bank of India" Pallipalayam Branch, on 25.08.2005 and the same was dishonoured as "Insufficient Finds" in the account of the revision petitioner herein/accused. Thereafter, the respondent herein/complainant on 19.09.2005 had issued a statutory notice to the revision petitioner herein/accused through his counsel and the said notice was returned to counsel with an endorsement as "Refused returned to sender." Hence, the complaint.

4.During the course of trial on behalf of the respondent herein/complainant, one Subramaniam was examined as PW1 and Exs.P1 to P7 have been marked; on behalf of the defence, one Selvaraj was examined as DW1 and Ex.D1/I.P Petition No. 9 of 2005 has been marked.

5.Before the Trial Court, the learned counsel for the revision petitioner herein/accused has contended that the accused has not borrowed any amount from the complainant at any point of time and the cheque leaves were not issued by him for any legally enforceable debt as alleged and the signature in Exs.P1 & P2/cheques were not the signature of the accused and there is no legally recoverable debt and hence, the complaint is not maintainable.

6.After perusing the materials placed on record, the learned Judicial Magistrate, Tiruchengode, has convicted the revision petitioner herein/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and to pay compensation of Rs.1,14,000/-. Aggrieved against the same, the revision petitioner herein/accused has preferred a Criminal Appeal No.53 of 2014, before the learned Principal District and Sessions Judge, Namakkal and by an order date 19.07.2016, the learned judge has dismissed the said appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate(FTC) Tiruchengode, in STC.No.273 of 2012. Both the Courts below have held that the accused has not explained how the cheques were reached to the private complainant. Hence, the present Criminal Revision Case has been preferred by the accused.

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

8.The learned counsel for the revision petitioner/accused would contend that there is no dispute with regard to the fact that Exs.P1 & P2/cheque leaves herein are the cheque leaves supplied by the bank to the revision petitioner herein/accused in respect of his account maintained with banker. While so, the signature found in Exs.P1 & P2/cheques were not admitted by the accused and he has not borrowed any amount as alleged by the respondent herein/complainant and the cheque leaves were not issued by the accused to the complainant and no consideration was passed from the respondent herein/complainant to the accused with respect to the case cheque leaves.

9.The complainant immediately after the dishonor of the case cheque leaves, has issued the statutory notice/ Ex.P6 and it was returned with an endorsement "Refused returned to sender", as evidence by Ex.P7.

10.In Kanju Viswanadhan Vs. Ramakrishnan Surendran 1998 Crl. LJ 3553 (Ker), it has been held that

> "Where undelivered registered notice sent on behalf of the complainant to the drawer bears the endorsement 'refused' by the drawer, made by the postal authorities, the presumption under Section 27 of the General Clauses Act as well as Section 114 of the Evidence Act are available in favour of the complainant but the knowledge of notice can be imputed on addressee from the date of refusal and not from the date of dispatch of the notice".

Hence, Ex.P7 is deemed to be served properly.

11.In (2007) 2 MLJ (Crl) 248 (SC) Rationes Decidendi laid down by the Larger Bench the Hon'ble Apex Court is as below:-

> "In view of the presumption available under Section 27 of the General Clauses Act, it is not necessary to aver in the complaint under section 138 of the NI Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."
>
> "When the notice is sent by registered post by correctly addressing the drawer of the cheques, the mandatory requirement of issue of notice to terms of clause (b) of proviso to section 138 of the N.I. Act stands complied with."
>
> "A person who does not pay within 15 days of

> receipt of the summons from the court along with the copy of the complaint under section 138 of N.I. Act cannot contend that there was no proper service of notice as required under section 138 of the Act, by ignoring statutory presumption to the contrary under section 27 of the General Clauses Act and section 114 of the Evidence Act”.

As held in the above decision, the accused who has not paid the amount even after receipt of the summon from the Court along with the copy of the complaint under Section 138 of Negotiable Instruments Act and has not sent any reply, cannot contend that there was no proper service of notice as required under Section 138 of the Act. Admittedly, the accused has denied the signatures in Exs.P1 & P2/Cheques.

12.Records reveals that when the matter was pending before the learned Judicial Magistrate, Namakkal in C.C.Nos.562 & 563 of 2005, this accused has filed four applications in both the Criminal Revision Cases viz., Crl.R.C.Nos.1163 & 1164 of 2016. In each C.C. the accused has filed two applications, one set of petitions in CMP.Nos.7022 & 7024 of 2005 were to call for the admitted signature found in his bank account No.3066 from the Dhanalakshmi Bank Limited, Erode Branch while another set of petitions in CMP.Nos.7021 & 7023 of 2005 were filed for sending the cheque in question to the Forensic Science Department for making comparison of the disputed signature with the admitted signature.

13.By a separate order, the learned Judicial Magistrate, on 23.10.2009, has allowed CMP.Nos.7022 & 7024 of 2005 as prayed for by directing the bank authority to produce admitted signature of the accused in the bank records. In support of other two applications viz., CMP.Nos.7021 & 7023 of 2005, the learned Magistrate has chosen to dismissed the same on the ground that signature can be verified under Section 73 of the Indian Evidence Act by the Court itself. Report from the Forensic Department was unwarranted. Aggrieved against the same, he has filed Crl.R.C.Nos.213 & 223 of 2010, before this Court. By an order dated 19.09.2013, both the Criminal Revisions were disposed of with liberty was given to the accused to seek appropriate remedy at appropriate stage and the Trial Court shall decide depending upon the nature of the defence and evidence available before it in the manner known to law.

14.It appears that both the Trial Court as well as the Lower Appellate Court has forgot to see this order passed by this Court, when there is specific order by this Court to verify the signature since signature in Exs.P1 & P2/cheques were disputed. Both the Courts below have miserably failed to do exercise, as directed by this Court, in the above said order. When the signature in the cheques is disputed presumption under Section 139 of the Negotiable Instruments Act does not arise in favour of the respondent herein/complainant. Both the Courts below have made a sweeping statement including above order.

15.As per the orders passed in CMP.Nos.7022 & 7024 of 2005, the Trial Court ought to have compared the signature of the accused as found in the bank records to arrive at a conclusion.

16.Hence, this Court finds that prayer to send the signature for comparison was allowed and prayer to send for expert opinion alone was rejected, however as directed, the Trial Court to take appropriate remedy at appropriate stage for comparison, the accused/revision petitioner has entered into witness box as DW1 and could deposed that he has specifically disputed the signature in Exs.P1 & P2/Cheques and he has already filed the necessary applications for comparison of signatures found in the cheque. For the reasons best known, both the Courts below have apparently not considered the earlier order passed by this Court in Crl.R.C.Nos.213 & 223/2010 dated 19.10.2013, whereby duty was passed upon the Court to verify signatures found in Exs.P1 & P2/cheques. Certified copies of the cheques were filed.

17.Further, this Court finds that there is a material alteration as to the date of the cheque in Ex.P1/cheque, initially it was dated 08.10.2004 and later it was scored off and 07.06.2005 was written and in Ex.P2/cheque, initially it was dated 18.08.2004 and later it was scored off and 18.06.2005 was written.

18.At this juncture, the suggestive case of the defence as spoken to by the accused in the witness box as DW1 is that as per Ex.D1, he had filed insolvency petition under Sections 8 & 9 of the Provincials of the Insolvency Act before the learned Principal Sub Judge, Tiruchengodu, in I.P.No.9 of 2005 and the said insolvency petition was filed on 08.08.2005. These two cheques after alteration of the date resembles as if it is dated 07.06.2005 and 18.06.2005. However, on a perusal of Exs.P3 & P4/return memos dated 25.08.2005, by the Bank, this Court finds that the cheques were returned on 25.08.2005 and 27.08.2005. Admittedly, these two cheques were presented for encashment before the bank only after filing of the insolvency petition in I.P.No.9 of 2005 as could be seen from Ex.D1, assumes significance and cause serious doubt as to the nature of the alteration with regard to dates in Exs.P1 and P2.

19.Admittedly, in view of the order passed by this Court in Crl.R.C.Nos.213 & 223 of 2010, a duty was passed upon the learned Judicial Officer, to verify the signature since it was filed under Section 76 of the Indian Evidence Act.

20.On a perusal of the signature found in the two cheques along with the signature found near and below of the date of the cheque, this Court find that all the signatures were totally forged in all aspects and hence, this Court has no hesitation to held that Exs.P1 & P2/Cheques suffers from material alteration amounting in validation of the cheques, besides this Court also finds that merely because the accused has not filed any declaration in the insolvency petition to include these dates, it will not wipe out his defence however, since complainant come forward with specific case based upon Exs.P1 & P2/cheque, which suffers from material alteration as to the date and the signatures and coupled with order passed by this Court in Crl.R.C.Nos.213 & 223 of 2010, both the Courts below have not properly understood the order passed by this Court in Criminal Revision Cases with regard to comparison of signature by the Court and hence, when the signature itself is under doubt, the respondent herein/complainant is not entitled for presumption under Section 139 of the Negotiable Instruments Act. Consequently, this Court finds that the finding rendered by both the Courts below that the private complainant is entitled for statutory presumption under Section 139 of NI Act is erroneous and accordingly said finding is hereby set aside and hence, in the absence of any positive evidence regarding passing of consideration under Exs.P1 & P2/cheques and coupled with the material contradiction in Exs.P1 & P2 and as to the signature in the absence of any statutory presumption, the complainant has not proved his case.

21.In this view of the matter, this Criminal Revision Case stands allowed and the conviction and sentenced passed in S.T.C.No.273 of 2012, by the Judicial Magistrate [Fast Track Court], Tiruchengode, dated 26.06.2014, as confirmed in C.A.No.53 of 2014, by the learned Principal Sessions Judge, Namakkal, dated 19.07.2016 is hereby set aside. The revision petitioner is acquitted.

The arguments of the legal aid counsel viz., Ms.V.Valarmathi, for the respondent is hereby appreciated and placed on record.

Note: High Court Legal Aid Services Authority is directed to award a sum of Rs.5,000/- to M/s.V.Varlarmathi, legal aid counsel appearing for the respondent.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

dua

To:

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate [Fast Track Court],
Tiruchengode.

3.The Chief Judicial Magistrate,
Namakkal.

Copy to:
The Secretary,
The Legal Aid Service Authority,
High Court, Madras.

+1cc to M/s.Dass & Viswa Associates, Advocate, S.R.No.48477
+3cc to M/s.V.Valarmathi, Advocate, S.R.No.48815, 48816

Crl.R.C.No.1163 of 2016

KSM(CO)
CB(27/10/2021)