



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.Nos.10289/2016 in Crl.R.C.No.1164/2016 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.1164 of 2016

P.Selvaraj

... Petitioner/Accused

Vs.

P.M.Palanisamy

... Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 & 401 of Cr.P.C., seeking to call for the records in C.A.No.54 of 2014, dated 05.11.2014 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.294 of 2012 dated 26.06.2014 to undergo 6 months of simple imprisonment and to pay compensation a sum of Rs.1,25,000/- to the complainant for the offence U/s.138 of N.I.Act and to set aside the same.

For Petitioner : Mr.S.Viswanathan

For M/s.Dass and Viswa Associates

For Respondent : M/s.V.Valarmathi,

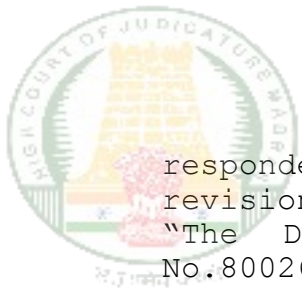
Legal Aid Counsel

O R D E R

(This case has been heard through video conference)

The convicted accused is the revision petitioner herein.

2.The respondent herein/complainant has filed a private complainant under Section 200 of Cr.P.C for the offence under Section 138 of the Negotiable Instruments Act in STC.No. 294 of 2012, before the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Tiruchengode, alleging that on 25.01.2005, the accused has borrowed a sum of Rs.1,25,000/- from the



respondent herein/complainant and to discharge the liability the revision petitioner herein/accused had issued a cheque drawn on "The Dhanalakshmi Bank Ltd, Erode Branch, cheque bearing No.8002624, dated 25.02.2005 for a sum of Rs.1,25,000/-, which was marked as Ex.P1, in favour of the respondent herein/complainant. Thereafter, the complainant presented the said cheque for encashment through the "Corporation Bank" Pallipalayam Branch, on 24.08.2005 and the same was dishonoured as "Insufficient Funds" in the account of the revision petitioner herein/accused. Thereafter, the respondent herein/complainant on 19.09.2005 has issued a statutory notice to the accused through his counsel and the said notice was returned to counsel with an endorsement of 'Refused returned to sender'. Hence, the complaint.

3.During the course of the trial, on behalf of the respondent herein/complainant one Palanisamy was examined as PW1 and marked Exs.P1 to P4; on behalf of the defence/accused, one Selvaraj was examined as DW1 and marked Ex.D1.

4.The learned counsel for the revision petitioner/accused, before the Trial Court has contended that the accused has not borrowed any amount from the complainant at any point of time and the cheque was not issued by him for any legally enforceable debt as alleged and the signature in Ex.P1/cheques was not the signature of the accused and there is no legally recoverable debt and hence, the complaint is not maintainable.

5.After perusing the materials placed on record, the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), 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.1,25,000/-. Aggrieved against the same, the revision petitioner herein/accused has preferred a Criminal Appeal No.54 of 2014, before the learned Principal 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.294 of 2012. Hence, the present Criminal Revision Case has been preferred by the accused.

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

7.The learned counsel for the respondent herein/complainant would contend that the accused/revision petitioner herein had borrowed a loan amount of Rs.1,25,000/-



from the complainant and for the repayment of the said loan the revision petitioner herein/accused had issued Ex.P1/cheque in favour of the complainant to discharge the legally enforceable pre-existing debt.

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8. While so, the learned counsel for the revision petitioner herein/accused would contend that the signature in Ex.P1/cheque is not at all the signature of the accused and he has not borrowed any amount as alleged by the complainant and the cheque was not issued by him to the respondent herein/complainant.

9. The learned counsel for the revision petitioner/accused would contend that there is no dispute with regard to the fact that Ex.P1/cheque herein is the cheque supplied by the bank to the revision petitioner herein/accused in respect of his account maintained with banker. While so, the signature found in Ex.P1/cheque was not admitted by the accused and he has not borrowed any amount as alleged by the respondent herein/complainant and the cheque was not issued by the accused to the complainant and no communication was passed from the respondent herein/complainant to the accused with respect to the case cheque. Both the Courts below have held that the accused has not explained how the cheque was gone into the hands of the complainant.

10. The complainant immediately after the dishonor of the case cheque, has issued the statutory notice/ Ex.P6 and it was returned with an endorsement "Refused returned to sender", as evidence by Ex.P4.

11. The learned counsel appearing for the revision petitioner herein/accused would contend that the statutory notice was not served on the accused and hence, the complaint is not maintainable. On a perusal of Ex.P3 & Ex.P4, it is clear that the complainant after the dishonour of the case cheque, the complainant has issued Ex.P3/statutory notice and it was returned with an endorsement "refused returned to sender".

12..In Kanju Viswanadhan Vs. Ramakrishnan Surendran 1998 Cr1. 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".

13.A perusal of Ex.P3/statutory notice, the number and the date of the cheque, name of the bank in which it was drawn, have been clearly disclosed and specific demand was made for the payment of the cheque amount.

14.Further, the learned counsel for the revision petitioner herein/accused would contend that the statutory notice has not contained all particulars regarding transaction and the accused has not at all received the statutory notice but refused and returned to sender.

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

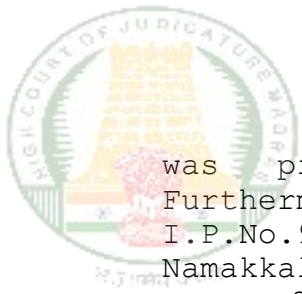
"In view of the presumption available under Section 27 of the General Clauses Act, it is not necessary to aver in the complaint under section 138 of the NI Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

"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".

16.The case of the revision petitioner/accused is that on 08.08.2005, he has preferred insolvency petition under Sections 7 & 10 of the Provincials of the Insolvency Act, in I.P.No.9 of 2005, wherein, he has disclosed all the dates and since, he has not borrowed any amount from the complainant in connection with this cheque, the same was not disclosed.

17.Further, the accused has taken a similar stand in STC.No.273 of 2012 connected with the Crl.R.C.No.1163 of 2016, which is dismissed on the same day(today). In this regard, it has to be stated that Ex.P1/cheque is dated 25.02.2005, Ex.P2/return memo dated 24.08.2005, in other words, the cheque



was presented after six months, assumes significance. Furthermore, the date of filing of insolvency petition in I.P.No.9 of 2005, before the learned Principal Sub Judge, Namakkal, is on 08.08.2005 also relevant since it is a specific case of the revision petitioner/accused that he, after filing insolvency petition in I.P.No.9 of 2005, the case cheque has been presented by some unscrupulous person, from whom, he has not received any debt, as disclosed by him, in the said insolvency petition.

18.If the accused borrowed amount from the private complainant/respondent herein, he could have been very well included those names as a schedule in the insolvency petition and some of the person from whom he had received debt, as disclosed in the insolvency petition, have also taken signature in the blank cheque and fabricated the signature as that of the accused used the private complainant as a toy and filed present complaint. As stated supra, during the cross-examination of PW1 the signature in the cheque was disputed. The accused as DW1 specifically stated that the signature contained in Ex.P1 is also specifically disputed.

19.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., CrI.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.

20.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 CrI.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.



21.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 Ex.P1/cheque was disputed. Both the Courts below has miserably failed to do exercise, as directed by this Court, in the above said order. When the signature in the cheque 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.

22.As per the orders passed in CRP.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.

23.After perusing contemporary documents filed before this Court in Ex.D1 & Ex.P1 and also Ex.P1 & P2/cheques in the connected Crl.R.C.No.1163 of 2016, this Court satisfied that there is a vast difference in the signature as found in Ex.P1 since signature was disputed and it is appear to be manipulated. This Court finds that the suggestive case of the defence that this cheque leaves have been manipulated by forged signatures and presented for collection after the insolvency petition was filed on 08.08.2005. Admittedly, the cheque was presented for encashment before the complainant's bank on 24.08.2005 i.e, one day prayer to six months expiry period, but the same is subsequent to 08.08.2015/the date filing of the insolvency application and hence this Court finds that the revision petitioner/accused has probablised the suggestive case and hence in the absence of any positive evidence to show passing of consideration under the cheque, the complaint filed by the private complainant has to file.

24.Yet another point is that PW1 has not stated the date of lending of the above said amount in his legal notice/Ex.P3. So, in PW1 cross examination, he has admitted non mentioning of the date of the loan and he has not even disclosed the purpose for which the loan was sought for. He has categorically admitted that he has not disclosed the purpose for which the accused has asked for the loan and further he has also admitted that where he has given the amount neither in the complaint nor in the evidence, he has not stated about the place of lending. In other words in the cross-examination of PW1, he admitted that he has not mentioned for what purpose the loan was asked by the complainant, he has not disputed about place where he has lend loan, he has not whispered either in the complaint or in the chief examination regarding the place lending of the loan and date of asking of the loan.



25.Hence, this Court finds that the suggestive case of the prosecution that the private complainant is totally stranger, appears to be more probable. In view of the findings that the signature found in Ex.P1/cheque has not found to be at variation with the signature found in the admitted document Ex.D1 and another cheques Exs.P1 & P2 in the connected revision petition viz., Crl.R.C.No.1163 of 2016, the private complainant is not entitled to presumption under Section 139 of the Negotiable Instruments Act and furthermore, in view of the admission of PW1 in the cross-examination regarding details of the asking of the loan by the accused, lending of the amount are bereft of details neither in the legal notice nor in the complaint nor in the PW1 chief-examination also probablise the suggestive case and hence, the order of conviction passed by both the Courts below is liable to be set aside

26.Hence, this Criminal Revision Case stands allowed. The conviction and sentenced passed in S.T.C.No.294 of 2012, by the Judicial Magistrate [Fast Track Court], Tiruchengode, dated 26.06.2014, as confirmed in C.A.No.54 of 2014, by the learned Principal Sessions Judge, Namakkal, dated 05.11.2014, is hereby set aside and the revision petitioner is acquitted. In view of the conditional order passed at the time of admission in Crl.M.P.Nos.10286 & 10289 of 2016, amount deposited by the accused is permitted to be withdrawn.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To:

- 1.The Principal Sessions Judge,  
Namakkal.
- 2.The Judicial Magistrate [Fast Track Court],  
Tiruchengode.
- 3.The Chief Judicial Magistrate,  
Namakkal.
- 4.The Secretary,  
Legal Aid Service Authorities,  
High Court, Madras.



+3cc to M/s.V.Valarmathi, Advocate, S.R.No.48814, 48817  
+1cc to M/s.Dass and Viswa Associates, Advocate, S.R.No.48498

Crl.R.C.No.1164 of 2016

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CB(27/10/2021)