



BAIL SLIP
IN
CRL.RC.NO.1244/2016

WEB COPY The Petitioner namely P.Mani aged 58 years was directed to be released on bail in and by the order of this Court dated 26/10/2016 made in Crl.R.C.No.1244/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1244 of 2016

P.Mani

... Petitioner

Vs.

1.M.Senthilkumar,

2. The State of Tamilnadu
represented by the Public Prosecutor
Erode.

... Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the judgment passed by the 2nd Additional District and Sessions Judge of Erode, in C.A.No.144 of 2015 dated 10.08.2016 confirming the Judgment passed by the Judicial Magistrate/Fast Track Court-I, Erode, in S.T.C.No.163 of 2014 dated 13.10.2015 and acquit the petitioner/accused and allow the above Crl.R.C.

For Petitioner : Mr.V.S.Kesavan

For Respondents : M/s.R.Shase for
M/s.M.Guruprasad for R1

Mr.A.Gopinath
Government Advocate
(Crl.Side) for R2



O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned II Additional District and Sessions Judge, Erode dated 10.08.2016 made in C.A.No.144 of 2015.

2. The case has arisen out of a private complaint given by the first respondent/complainant on the allegations that the petitioner/accused borrowed a sum of Rs.5,00,000/- on 12.05.2013 and promised to repay the same. He also gave a post - dated cheque dated 12.07.2013 for Rs.5,00,000/- drawn on Karnataka Bank Limited, Erode. When the cheque was presented for collection on 12.07.2013, it was returned as "Refer to Drawer" on 13.07.2013. Having construed that it was due to insufficient funds, the respondent/complainant had complied the legal mandates of issuing pre-suit notice and filed the private complaint for punishing the petitioner/accused under Section 138 read with 142 of Negotiable Instruments Act, 1881. Since the petitioner/accused denied the commission of the alleged offence, trial was conducted.

3. On the side of the respondent/complainant, complainant himself was examined as PW1 and four documents were marked as Exs.P1 to P4. On the side of the petitioner/accused, one witness was examined as DW1 and no document was marked. After the conclusion of trial and considering the materials available on record, the learned Trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act, and convicted and sentenced him to undergo 6 months Simple Imprisonment and imposed a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for 15 days. The appeal preferred by the accused in C.A.No.144 of 2015 before the learned II Additional District and Sessions Judge was also dismissed. Aggrieved over that, the accused has preferred the present Revision.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the entire materials available on record.

5. Point for consideration:

Whether the conviction and sentence of the first accused for the offence under Section 138 of Negotiable Instruments Act by the learned Sessions Judge based on the materials available on record is fair and proper?



6. The learned counsel for the revision petitioner/accused submitted that despite the cheque was returned for the reason "Refer to Drawer", the complainant has alleged in his evidence as "insufficient funds" and the contradictions in the evidence of the complainant was over looked by the trial Judge; and the preponderance of probabilities in favour of the petitioner/accused was not properly appreciated; the complainant does not have the financial capacity to lend such a huge sum of Rs.5,00,000/- and hence the impugned cheque is not executed for a legally enforceable debt.

7. The learned counsel for the respondent/complainant submitted that the position of law has already been settled that even if the cheque is returned for "Refer to Drawer", the action under Section 138 of Negotiable Instruments Act is very much maintainable; the notice has been sent to the address last known to the respondent/complainant and that itself is sufficient notice in accordance with Section 27 of the General Clauses Act; the respondent/complainant is having a poultry and doing agriculture and hence, he has sufficient means to lend the sum of Rs.5,00,000/- to the petitioner/accused. Despite the petitioner has stated that he has issued the impugned cheque to one P.K.Palanisamy, the said person was not examined as a witness on the side of the petitioner. The petitioner did not examine himself in order to prove his defence and hence, the respondent/complainant is entitled to the benefits of the presumptions contemplated under Sections 118 and 139 of Negotiable Instruments Act.

8. The petitioner/accused did not deny the execution of cheque. His only contention is that the cheque was actually issued to one P.K.Palanisamy, but it was misused by the respondent/complainant in order to file this complaint. But the said fact was not substantiated by the petitioner/accused. Even in the cross examination of PW1, the said contention of the petitioner/accused was not admitted. As per Section 139 of Negotiable Instruments Act, if the execution of the cheque does not deny its execution, the initial presumption will go in favour of the holder of the cheque that the cheque was issued for a legally enforceable debt. However, the said presumption is subject to rebuttal and it is always open to the petitioner/accused to rebut the same by adducing any contrary proof. It is true that the contrary proof need not necessarily be the evidence adduced by the petitioner/accused and it can be the improbabilities or material inconsistencies shown to exist in the case of the complainant.



9. The reading of the entire evidence of PW1 would show that he did not give any adverse information with regard to his means, material aspects of the cheque and other material details related to the transaction. In such situation, it is not possible for the petitioner/accused to look for any improbabilities in the case of the complainant. So petitioner/accused has got a duty to substantiate his defence by producing evidence. Even on a cheque which was returned for "Refer to Drawer", action under Section 138 of Negotiable Instruments Act is maintainable. The position of law is well settled on this point. The Courts below have rightly dealt the above point and held it in favour of the complainant.

10. The petitioner/accused has not produced any other evidence with regard to the alleged financial capacity of the complainant also so as to rebut the initial presumption. In the absence of any rebuttal proof, it is needless to say that the initial presumption would culminate into the conclusive proof and that would prove the guilt of the accused. The Courts below have rightly adverted and appreciated the evidence available on record and held that the petitioner/accused is guilty for the offence under Section 138 of Negotiable Instruments Act. In my considered view, it does not warrant any interference.

11. In the result, this Criminal Revision Case is dismissed. The judgment of the learned II Additional District and Sessions Judge, Erode dated 10.08.2016 made in C.A.No.144 of 2015 is hereby confirmed. The Trial Court is directed to issue warrant to secure the petitioner/accused to undergo remaining period of incarceration.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

kmi

To

1.The II Additional District and Sessions Judge,
Erode.

2.The Judicial Magistrate No.1,
Fast Tract Court,
Erode.



3.The Chief Judicial Magistrate,
Erode (For information)

4.The Public Prosecutor,
High Court of Madras,
Chennai-600 104.

5.The Public Prosecutor,
Erode.

+1cc to Mr.M.Guruprasad, Advocate SR.No.63257

Cr1.R.C.No.1244 of 2016

GPL (CO)
CB (27/12/2021)