



BAIL SLIP

The Petitioner/Accused namely A.Nagaraj, S/o.Ayyasamy was directed to be released on bail as per the order of this Court dated 04/01/2017 in CRL.M.P.No.12621 of 2016 in CRL.R.C.No.1451 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021

PRONOUNCED ON : 19.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.1451 OF 2016

AND

CRL.M.P.NO.12621 OF 2016

A.Nagaraj ... Petitioner/Accused

Vs.

1. S.Dhamodhara Prakash ... 1st Respondent/Complainant

2. The State represented by,
The Public Prosecutor,
Erode. ... 2nd Respondent/2nd Respondent

PRAYER:-

This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to set aside the judgment dated 20.09.2016, passed in Crl.A.No.129 of 2015 on the file of the learned I Additional District and Sessions Judge, Erode, confirming the judgment dated 28.09.2015 passed in STC.No.145 of 2013 on the file of the Judicial Magistrate (Fast Track) Court No.1, Erode.

For Petitioner : Mr.I.C.Vasudevan

For R1 : Mr.K.Ramana Moorthy

For R2 : Mr.R.Vinoth Raja
Government Advocate (Crl.Side)



JUDGMENT

(The case has been heard through Video Conference)

The convicted accused is the revision petitioner herein.

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2. This Criminal Revision Case is filed against the order passed in Crl.A.No.129 of 2015, on the file of the learned I Additional District and Sessions Judge, Erode, dated 20.09.2016, wherein, the learned Judge has confirmed the judgment passed in STC.No.145 of 2013, on the file of the learned Judicial Magistrate (Fast Track Court) No.I, Erode, for the alleged offence under Section 138 of the Negotiable Instruments Act.

3. The main contention of the revision petitioner/accused is that the cheque in issue was dated 05.03.2013 and it was dishonored on 06.03.2013 and the legal notice under Ex.P3 was issued on 13.03.2013, which was received by the accused on 15.03.2013. When that being the case, a complaint under Section 138 of the Negotiable Instruments Act can be instituted only after fifteen days of expiry from the date of service of notice on the defaulter viz., accused. The case instituted on 23.01.2013 and hence, it is premature.

4. Per contra, the learned counsel for the respondent would contend that the revision petitioner/accused has not challenged the said transaction and not disputed the signature in the cheque. Further, he would contend that with regard to the alleged handing over the cheque to one Dhanasekar, the suggestive case of the defence was not probablised and with regard to the financial capacity on the respondent/private complainant, he had categorically deposed in the cross-examination that he is running the Textile Industry. Hence, financial capacity to pay Rs.5,00,000/- is established and relied upon the decision of the Hon'ble Supreme Court reported in 2000 (7) SCC 183 - (Narsingh Das Tapadia Vs. Goverdhan Das Partani and another) stating that the private complaint is not pre-mature.

5. The learned counsel for revision petitioner by way of reply, would state that in the Judgment reported in 2014 10 SCC 713 - (Yogendra Pratap Singh Vs. Savitri Pandey and another), earlier judgment of this Court was over-ruled.

6. On a perusal of the evidence of PW1/Damodharan and also the documents as pointed out by the learned counsel for the respondent, the revision petitioner/accused has not challenged the transaction between the parties, not disputed the signature in the cheque.



7. The specific case of the accused/revision petitioner herein is that the cheque was given to one Dhanasekar. But in this connection no one was examined to probablise the suggestive case of the defence.

WEB COPY

8. Yet another point is that the financial capacity of the first respondent/private complainant to pay such amount viz., 5,00,000/- however PW1 has admitted that he is running the textile industry. This Court finds that as to the maintainability of the complaint as pre-mature, no question has been put to PW1 in the cross examination also assumes significance. Neither in the counter filed by the the revision petitioner/accused, no such plea has been raised by the revision petitioner before the Trial Court as well as the lower Appellate Court and hence, the order passed by the learned First Additional District and Sessions Judge, Erode, in Criminal Appeal No.129 of 2015 is set aside and the matter is remitted back to the leaned First Additional District and Sessions Judge, Erode, to take up the Criminal Appeal No.129 of 2015 and directed to give an opportunity to both the parties to let any additional evidence if any and to determine whether the petition is premature or on time as contended by the respective parties and thereupon directed to decide the matter on merits.

9. With the above direction, this Criminal Revision Case stands allowed to the limited extent and the matter is remitted back for re-consideration of Criminal Appeal No.129 of 2015, to the the leaned First Additional District and Sessions Judge, Erode. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Fast Track Court No.1,
Erode.
2. The Chief Judicial Magistrate,
Erode. (For Information)



3. The I Additional District and Sessions Judge,
Erode.

4. The Superintendent,
The Central Prison,
Coimbatore.

5. The Public Prosecutor,
Erode.

6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.42343

+1cc to Mr.K.Ramana Moorthy, Advocate, S.R.No.41711

CRL.R.C.NO.1451 OF 2016 AND
CRL.M.P.NO.12621 OF 2016

VBM(CO)
PBS/02/09/2021