Bail Slip

The Petitioner namely T.Saravanan (Accused in S.T.C.No.170 of 2013, dated 16.04.2015 on the file of Judicial Magistrate, (FTC Magistrate Level), Tiruchengode confirmed by Principal Sessions Judge, Namakkal dated 08.09.2015 made in C.A.No.20 of 2015) was directed to be released on bail, vide order of this Court, dated 24.02.2016 in Crl.M.P.No.2100 of 2016 in Crl.R.C.No.315 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM

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

Crl.R.C.No.315 of 2016

T.Saravanan ...Petitioner/Accused

Vs.

V.Vadivel ...Respondent/Complainant

Criminal Revision Case filed under Sections 397 & 401 Cr.P.C., to call for the records pertaining to the case and set aside the conviction and sentences passed by the learned Judicial Magistrate Court (FTC Magistrate Level), Tiruchengode, in S.T.C.No.170 of 2013 dated 16.04.2015, which was confirmed by the learned Principal Sessions Judge, Namakkal, dated 08.09.2015 made in C.A.No.20 of 2015.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.R.Marudhachala Murthy

ORDER

This Criminal Revision Case has been preferred challenging the judgement passed by the learned Principal Sessions Judge, Namakkal, dated 08.09.2015 passed in C.A.No.20 of 2015.

2. This case has arisen out of a private complaint given before the learned trial Judge by the respondent/complainant on the allegation that the cheque issued by the revision petitioner/accused for discharging the loan availed by him, got dishonoured due to 'insufficient funds'. It is alleged by the respondent/complainant that on 05.10.2012, the accused borrowed a sum of Rs.10,00,000/- and towards discharging the same, he had issued a post dated cheque dated 03.04.2013 for a sum of Rs.10,00,000/- drawn on Axis Bank Ltd, Sankari Branch; when a cheque was sent for collection with his Axis Bank Ltd, Erode Branch, it was returned for the reason 'funds insufficient'.

3. After having issued a statutory notice and complied with all the legal mandates, the respondent/complainant filed a private complaint for taking action against the petitioner for the offence committed under Section 138 r/w 142 of the Negotiable Instruments Act. After taking the case on file and on being satisfied with the materials produced before the Court, the accused was questioned and the accused pleaded innocence and claimed to be tried, hence, the trial was conducted.

4. During the course of the trial, on the side of the complainant, one witness was examined as P.W.1 and Exs.P1 to P8 were marked. On the side of the defence, three witnesses were examined as D.W.1 to D.W.3 and no document was marked.

5. After concluding the trial and on consideration of the materials available on record, the learned trial Judge found the accused guilty under Section 138 of N.I. Act and convicted and sentenced him to undergo six months Simple Imprisonment and a fine of Rs.5,000/- in default to undergo Simple Imprisonment for one month. Challenging the said judgement, the accused preferred an appeal and the said appeal was also dismissed on 08.09.2015. Aggrieved over that, the revision petitioner has preferred this present revision case.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. The learned counsel for the revision petitioner submitted that the complainant did not have any financial capacity to lend a huge sum of Rs.10,00,000/- to the petitioner and the cheque issued by him is not supported by his funds. He has further submitted that the cheque was actually stolen by his previous employee D.W.2 and that was misused by the complainant for the purpose of this case.

8. The learned counsel for the respondent/complainant submitted that the revision petitioner has not taken the defence

that he has doubts on the financial capacity of the complainant before the lower Court. He has further submitted that the Courts below have rightly appreciated the evidence on record and chosen to give an initial presumption in favour of the complainant.

9. The fact that the cheque was executed by the revision petitioner is not denied. The one and only objection of the revision petitioner is that the cheque was not actually issued by him for discharging any debt or liability but it was stolen by his previous employee D.W.2 and he misused the same by colluding with the complainant. As per Sections 138 and 118 of N.I. Act, whenever the execution of the cheque is not disputed, the mandatory initial presumption has to be drawn to the effect that the cheque in question was issued for a legally enforceable debt or liability. However, such an initial presumption is not devoid of any defence and it is always open to the accused to rebut the initial presumption by producing the contrary proof. And the standard of proof so required for rebutting the initial proof is that of preponderance of probabilities. The accused need not even come to the box and examine himself for the purpose of disproving the initial presumption. It is sufficient if he could explore the improbabilities in the case of the complainant himself.

10. On perusal of the judgement of the trial Court, it is seen that the revision petitioner has chosen to send a reply to the notice sent by the respondent. However, in the reply notice, it is seen that the revision petitioner had denied the very execution of the cheque and claimed that it was a forged one. However, during the course of the trial, he had taken another defence that the cheque was stolen by his erstwhile employee D.W.2.

11. The learned trial Judge has rightly observed that the revision petitioner has not lodged any criminal complaint or taken any serious action on the allegation that one of his cheques was stolen by D.W.2. before the Civil Court. It is rightly observed by the learned trial Judge that anyone can come before the Court and say that the impugned cheques were stolen by someone. In the absence of any substantive proof, the kind of the defence taken by the accused could be taken as only formal. The learned Appellate Court have also rightly appreciated the manner in which the evidence was dealt by the trial Court and upheld the same.

12. It is not in dispute that there was some business transaction between the respondent/complainant and the accused. The main object of issuing cheques in a business transaction is to honour the cheques with all seriousness. The object of

Negotiable Instrument Act is to enable the business transaction to go seamlessly and add credibility to the negotiable instruments. In the absence of any contrary proof available on the records, it is correct on the part of the Courts below to allow the initial presumption to become conclusive proof and to find the guilt of the accused. Therefore, I find no merits in this revision.

In the result, this Criminal Revision Case is dismissed and the judgement of the learned Principal Sessions Judge, Namakkal, dated 08.09.2015 passed in C.A.No.20 of 2015 is confirmed. The trial Court is directed to issue the warrant to secure the accused for sending him to the prison to undergo the sentence.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sni
To

1. The Principal Sessions Judge,
   Namakkal.

2. The Judicial Magistrate Court (FTC Magistrate Level),
   Tiruchengode.

3. The Chief Judicial Magistrate,
   Namakkal.

4. The District Collector,
   Namakkal.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.R.Marudhachala Murthy, Advocate, S.R.No.65740
+1cc to Mr.S.Sivakumar, Advocate, S.R.No.65772

Crl.R.C.No.315 of 2016

GJ[co]
NSK 09/02/2022