BAIL SLIP

The Petitioner / Accused / Viz, Sree Kantaswamy was released on bail as per the Order of this Court dated 26.02.2016 in Crl.M.P.No.2242 of 2016 in Crl.R.C.No.334 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.334 of 2016

Sreekantaswamy ... Petitioner

Vs

C.Prakashkumar ... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w. 401 of Cr.P.C., against Judgment dated 28.01.2015 made in Crl.A.No.18 of 2014 on the file of the Principal District and Sessions Judge, Vellore, in confirming the Judgment dated 04.02.2014 made in C.C.No.177 of 2010, on the file of the Judicial Magistrate Court, Katpadi, Vellore District.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.M.Kempraj

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned Principal District and Sessions Judge, Vellore, dated 28.01.2015 made in C.A.No.18 of 2015.

2. This case has arisen out of the dishonour of the cheque alleged to have been issued by the petitioner/accused in favour of the respondent/complainant for discharging a loan amount of Rs.4,00,000/-. And for which, private complaint was filed under

Section 138 of Negotiable Instruments Act. The allegation of the respondent/complainant is that on 01.04.2008, the petitioner/accused borrowed a sum of Rs.4,00,000/- from the respondent on the assurance that he would repay the same within a period of two months. In view of an understanding between the parties, the amount does not carry any interest. On 03.06.2008, the petitioner issued a cheque for Rs.4,00,000/- drawn on ICICI Bank, Mysore Branch, in favour of the respondent/complainant for the purpose of discharging the loan amount of Rs.4,00,000/-. When the cheque was presented by the respondent/complainant on 14.07.2008, it was returned as 'Funds Insufficient'. The return intimation was received by the respondent/complainant on 22.07.2008. Subsequent to that, the respondent/complainant issued a statutory legal notice to the petitioner on 04.08.2008 calling upon to him to pay the cheque amount. But, the said notice was not served on the petitioner and it was returned as 'no such addressee'. Having waited for the mandatory period as contemplated under Negotiable Instruments Act, the respondent/complainant has filed the private complaint against the petitioner for punishing him under Section 138 of Negotiable Instruments Act and the said complaint was taken on file.

3. During the course of trial, on the side of the respondent/complainant two witnesses were examined as PW1 and PW2 and Exhibits P1 to P10 were marked and on the side of the petitioner/accused, no witness was examined and no documents were marked.

4. After conclusion of trial and on consideration of 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.3,000/- in default, to undergo one month simple imprisonment. The cheque amount of Rs.4,00,000/- issued was ordered to be paid as compensation to the respondent, in default, to pay compensation, the petitioner is ordered to undergo two months simple imprisonment. The said judgment was challenged by the petitioner/accused by preferring an appeal before the Principal District and Sessions Judge, in C.A.No.18 of 2014 and the appeal was also dismissed on 28.01.2015. Aggrieved over that, the petitioner/accused has preferred this Criminal Revision Case before this Court.

5. Point for consideration:

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

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

7. The learned counsel for the petitioner submitted that the respondent/complainant was working as a Supervisor under him and during that relevant period, he managed to steal the cheque belonging to the petitioner and he misused it for the purpose of this case. It is further submitted that the respondent has not complied the mandatory requirement of sending statutory notice as per Section 138(b) of the Negotiable Instruments Act, and further, the respondent does not have the financial capacity to lend the sum of Rs.4,00,000/- to the petitioner/accused.

8. The learned counsel for the respondent/complainant submitted that the petitioner did not deny the execution of the cheque and hence, it has to be presumed that the cheque was issued for a legally enforceable debt. It is further submitted that the notice was sent to the petitioner to his last known address and even at the time of filing the Criminal Revision Case, the petitioner has stated to be residing in the very same address. The petitioner/accused wantonly returned the notice and that cannot be construed as non-compliance of notice sent under Section 138(b) of Negotiable Instruments Act. He further submitted that his father has sold a family property in the year 2002, and the sale proceeds were in the custody of his father's friend. Only when the petitioner approached him for financial assistance, he managed to get the amount through his father and gave it to the petitioner.

9. The respondent is known to the petitioner. The petitioner himself has stated that the respondent had worked as a Supervisor under him at the relevant point of time. So the parties are not strangers they knew each other. The petitioner has admitted that the impugned cheque belonged to him and it contained his signature. But the only contention of the petitioner is that the respondent did not have the financial capacity to lend the sum of Rs.4,00,000/- as claimed by him. He has also raised a technical point that the pre-litigation notice contemplated under Section 138(b) has not been duly served on him and that would vitiate the proceedings.

10. As per Section 139 of Negotiable Instruments Act, if the executant of the cheque does not deny its execution, it has to be presumed that the cheque amount has been given only for the purpose of discharging legally enforceable debt payable to the holder of the cheque. Though the complainant gets this presumption in his favour that can be rebutted by the accused by producing the proof to the contrary. The standard of proof for such rebuttal is not strict proof of beyond reasonable doubt,

but only through preponderance of probabilities. It is sufficient if the accused could establish through preponderance of probability that the cheque was not supported by consideration.

11. In the case on hand, the petitioner has submitted that the respondent/complainant did not have the financial capacity to lend a sum of Rs.4,00,000/- to him and the impugned cheque was stolen by the respondent when he was working as Supervisor under the petitioner. Admittedly, no action has been taken by the petitioner on the allegation that the respondent had stolen any of his cheques. Such an action has not been taken even after the filing of his complaint. Though it is correct that the rebuttal proof can be through preponderance of probability, the probability cannot be presumed from mere suggestion put by the accused during his cross examination, PW1. Even if the accused does not subject himself for examination, the improbabilities can also be explored from the evidence and materials of the complainant. The simple contention of the complainant is that he had lent the sum of Rs.4,00,000/- to the petitioner for his business needs and he managed to arrange the money from the sale proceeds kept in the hands of his father. The complainant produced the copy of the sale deed dated 07.11.2002 and that would show that the property was sold on the said date for a valuable consideration.

12. Though it is the contention of the learned counsel for the petitioner that it is unbelievable that the sale consideration which was got in the year 2002 was kept in the hands of the respondent or his father till the year 2008 and the same was utilised for lending loan to the petitioner, it is the option of the respondent or his father to utilise the sale proceeds in the manner preferred by them. Thus, prima facie proof is shown by the respondent/complainant to show that he had the background to lend a sum of Rs.4,00,000/- to the petitioner/accused. The initial presumption coupled with the supporting evidence will strengthen the case of the complainant and make the initial presumption culminated into the conclusive proof, in the absence of any contrary proof. But the petitioner/accused had not produced any materials to demolish the above proof offered by the petitioner. In the said circumstances, it has to be concluded that the petitioner had not rebutted the evidence of the respondent/complainant or falsified it.

13. The second point raised by the petitioner is that the respondent has not sent the statutory legal notice in the manner known to law and complied with the mandatory requirements before filing the complaint. Once the cheque is dishonoured for insufficient funds, the complainant has to necessarily send a

legal notice in compliance of Section 138(b). The complainant has chosen to send the notice to the address known to him in which the accused was residing and the same address was shown as his address in this Criminal Revision Case also and that proves that the petitioner continues to live there but some how evaded to receive notice. 14. In such circumstances, the notice returned for the reason that addressee not found cannot be held against the respondent. Hence, I am not able to agree with the contentions of the learned counsel for the petitioner/accused that the respondent has not complied the mandatory requirement contemplated under Section 138(b) of the Negotiable Instruments Act.

15. The learned Trial Judge and the learned First Appellate Judge have correctly appreciated the materials on record in a right perspective and arrived at the conclusion that the accused is guilty for the offence under Section 138 of Negotiable Instruments Act. Hence, the judgments of the courts below does not suffer from factual and legal infirmity and it does not warrant any interference.

16. In the result,

- This Criminal Revision Case is dismissed.
- The Judgment dated 28.01.2015 made in Crl.A.No.18 of 2014 confirming the Judgment dated 04.02.2014 in C.C.No.177 of 2010 is confirmed.
- The learned Trial Judge is directed to issue Non-Bailable Warrant for securing the accused to undergo incarceration.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Principal District and Sessions Judge,
   Vellore.

2. The Judicial Magistrate Court,
   Katpadi,
   Vellore District.

3. Do-Through,
   The Chief Judicial Magistrate,
   Katpadi,
   Vellore District.

4. The Section Officer,
   Criminal Section,
   High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.61852

Crl.R.C.No.334 of 2016

KV(CO)
SU(15/12/2021)