



Bail Slip

The Petitioner / Accused Viz., Srinivasan, S/o.Kudiyappa was released on bail as per order of this Court dated 15.04.2016 in Crl.M.P.No.4397/2016 in Crl.R.C.No.631 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.631 of 2016

Srinivasan

...Petitioner / Appellant /
Accused

Vs

T.Damodaran

...Respondent / Respondent /
Complainant

PRAYER: This Criminal Revision Case is filed under Sections 397 read with 401 of Cr.P.C., against the Judgment passed in Crl.A.No.54 of 2013 dated 08.02.2016 on the file of the Additional District and Sessions Court at Hosur, Krishnagiri District in confirming the conviction passed in Judgment dated 19.11.2013 in S.T.C.No.146 of 2012 on the file of the Judicial Magistrate, Fast Track Court at Hosur and sentencing the petitioner to undergo Six months imprisonment under Section 138 of the Negotiable Instruments Act 1882, and to pay compensation of Rs.1,00,000/- within a period of one month under Section 357 of the Criminal Procedure Code, 1973.

For Petitioner : Mr.R.Jayaprakash
For Respondent : Mr.D.Shivakumaran

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned the Additional District and Sessions Court at Hosur, Krishnagiri District, dated 08.02.2016 made in Crl.A.No.54 of 2013, confirming the Judgment of the learned Judicial Magistrate, Fast Track Court at Hosur dated 19.11.2013 passed in S.T.C.No.146 of 2012.



2. This case arose out of a private complaint given by the respondent/complainant on the allegations that the cheque issued by the petitioner for a sum of Rs.1,00,000/- dated 25.08.2012 got dishonoured on 04.09.2012 for 'Insufficient Funds'. The amount involved in the cheque is said to be the loan availed by the petitioner/accused. After issuing statutory notice and complying with the legal mandates, the complainant has filed the private complaint. After taking the complaint on file, the accused was questioned and he pleaded innocence and claimed to be tried.

3. During the course of trial, on the side of the prosecution, one witness was examined as PW1 and Exs.P1 to P5 were marked. On the side of defence, three witness were examined as DW1 to DW3 and one document was marked as Ex.D1.

4. After considering both oral and documentary evidence adduced on the side of the prosecution and on the side of the defence, the learned trial Judge found the accused guilty by convicting and sentencing the petitioner to undergo Six months imprisonment under Section 138 of the Negotiable Instruments Act, and to pay compensation of Rs.1,00,000/- within a period of one month under Section 357 of the Criminal Procedure Code, 1973.

5. The appeal preferred by the accused challenging the same in CrI.A.No.54 of 2013, was dismissed, confirming the judgment of the trial Court. Aggrieved by that, he preferred Criminal Revision Case before this Court.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. Point for consideration:

Whether the conviction and sentence of the accused for the offence under Sections 138 of the Negotiable Instruments Act and compensation awarded under Section 357 of Cr.P.C., by the learned Sessions Judge basing on the materials available on record, is fair and proper?

8. The learned counsel for the petitioner submitted that the cheque in question was not issued by the petitioner for enforcing the debt or liability. The son of the accused alone had availed a loan of Rs.20,000/- from the complainant and he repaid the same; however, the complainant has misused the cheque for the purpose of this case.



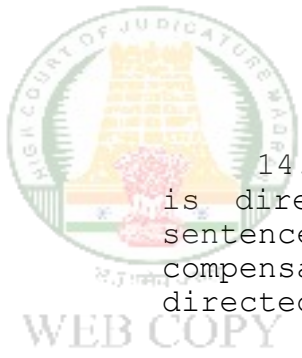
9. The learned counsel for the respondent/complainant submitted that the alleged loan amount availed by the son of the accused has nothing to do with this case transaction between the petitioner/accused and the respondent/complainant. The Courts below have rightly given the benefit of initial presumption under Section 139 of the Negotiable Instruments Act, in favour of the complainant. Since the accused has not proved the contrary, the revision case has to be dismissed.

10. The signature of the cheque is not disputed. The one and only contention of the petitioner/accused is that the cheque was not issued for discharging any debt or liability and it was given to the complainant only for the purpose of security for the loan availed by his son. When the execution of the cheque is not denied as per Sections 118 and 139 of the Negotiable Instruments Act, the initial presumption has to be taken in favour of the holder of the cheque, that the cheque was issued for a legally dischargeable debt only. But, the initial presumption can be rebutted by the accused by giving contrary proof. In the case on hand, execution of the cheque is not in dispute.

11. The learned counsel for the petitioner/accused submitted that Ex.D1 account note which is maintained to repay the loan availed by the son of the accused, would serve as a rebuttal proof. Admittedly, Ex.D1 is related to the alleged loan availed by the son of the accused from the complainant and it would show that this impugned cheque has been issued by the petitioner/accused as security or otherwise.

12. The case of the petitioner/accused is that the respondent / complainant did not have any financial problem to lend the sum of Rs.1,00,000/-. Since the accused has not produced any rebuttal proof by adducing evidence or exposed the improbabilities and in the case of the complainant, the Courts below have rightly appreciated the evidence on record and found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and also under Section 357 of Cr.P.C. I do not find any infirmity or illegality in the judgment of the Courts below and the same does not warrant any interference by this Court.

13. In the result, this Criminal Revision Case is dismissed and the judgment of the learned the Additional District and Sessions Court at Hosur, Krishnagiri District, dated 08.02.2016 passed in CrI.A.No.54 of 2013 is confirmed.



14. Since the petitioner/accused is on bail, the Trial Court is directed to secure his custody to undergo the remaining sentence, if any. The petitioner/accused is directed to pay the compensation of Rs.1,00,000/- to the respondent/complainant as directed by the Courts below.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

ssn

To

1. The Additional District and Sessions Court,
Hosur,
Krishnagiri District.
2. The Judicial Magistrate,
Fast Track Court,
Hosur.
3. The Judicial Magistrate,
Krishnagiri.
4. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.68019
+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.67412

Cr1.R.C.No.631 of 2016

NRL[co]
NSK 11/02/2022