Bail Slip

The Petitioner/Accused namely M.Mohanraj (Age 61) S/o.M.K.Muthusamy was directed to be released on bail by the order of this Court dated 27.04.2016 made in Crl.M.P.No.4973 of 2016 in Crl.R.C.No.695 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM

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

Crl.R.C.No.695 of 2016

M.Mohanraj ... Petitioner/Accused

Vs.

1.V.N.Periyasamy ... Respondent/Complainant

2.The Public Prosecutor,
Erode. ... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. seeking to call for records and allow this revision, set aside the Judgement of conviction and sentence of imprisonment and fine dated 06.10.2015, passed by the learned Judicial Magistrate, Fast Track Court No.1, Erode, in S.T.C.No.100 of 2013, as confirmed by the learned I Additional Sessions Judge, Erode, as per Judgment dated 22.01.2016 passed in C.A.No.141 of 2015.

For Petitioner : M/s.N.Premalatha

For Respondents: Mr.I.C.Vasudevan [for R1]

Mr.A.Gopinath,
Government Advocate [for R2]

ORDER

This Criminal Revision Case has been preferred challenging the Judgement dated 22.01.2016 passed in C.A.No.141 of 2015 by the learned I Additional Sessions Judge, Erode.

2. The revision petitioner is the accused before the trial Court.

3. This case has arisen out of a private complaint given by the respondent on the allegation that on 09.11.2012, the petitioner had availed a loan of Rs.5,00,000/- from the respondent and gave a post dated cheque dated 10.12.2012 for Rs.5,00,000/- drawn on Vijaya Bank, Tiruppur Branch for the purpose of discharging the above loan. When the cheque was presented for collection at Lakshmi Vilas Bank, Avalpoondurai Branch on 10.12.2012, it was returned on 14.12.2012 for the reason 'Opening balance insufficient'. After issuing mandatory pre-suit notice and complying the legal mandates, the first respondent has filed a private complaint for taking action against the petitioner for the offence under Section 138 r/w 141 of the Negotiable Instruments Act (N.I. Act). Since the petitioner pleaded innocence, trial was conducted.

4. On the side of the complainant, one witness was examined as P.W.1 and 9 documents were marked as Exs.P1 to P9. On the side of the accused, two witnesses were examined as D.W.1 & D.W.2 and 3 documents were marked as Exs.D1 to D3.

5. After concluding the 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 N.I. Act and convicted and sentenced him to undergo Six Months Simple Imprisonment and imposed a fine of Rs.5,000/- in default to undergo 15 days Simple Imprisonment. The appeal preferred by the accused against the said judgement before the learned I Additional Sessions Judge, Erode in Criminal Appeal No.141 of 2015 was also dismissed on 22.01.2016. Aggrieved over that, the petitioner/accused has preferred this revision case.

6. Heard the learned counsel for the petitioner, learned counsel for the first respondent and learned Government Advocate for the second respondent.

7. The learned counsel for the petitioner/accused submitted that the cheque was issued only when the petitioner availed a sum of Rs.50,000/- on 10.08.1997 and that was settled long back along with the interest. On 14.02.2000, he paid Rs.65,000/- in cash towards settlement of the said cheque amount; however, the respondent did not return the cheque issued by the petitioner and later misused it for the purpose of this case; when the petitioner repaid Rs.65,000/-, the respondent had executed a receipt (Ex.D2) by stating that he will not use the cheque in any manner.

8. The learned counsel for the respondents submitted that the alleged receipt (Ex.D2) did not contain the signature of the respondent and the genuineness of Ex.D2 was not proved by the petitioner. The learned trial Judge and the Appellate Judge have rightly appreciated the evidence on record and arrived at a correct conclusion that the impugned cheque was imposed for discharging a legally enforceable debt and hence, the revision case is liable to be dismissed.

9. Point for consideration :-

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

10. The execution of the cheque was not in dispute. The petitioner/accused has not denied the signature on the impugned cheques. Once execution of the cheque is admitted then the presumption prescribed under Section 139 r/w. 138 of the Negotiable Instruments Act goes in favour of the respondent. As per the said initial presumption, it has to be presumed that the cheque has been issued only towards discharging a legally enforceable debt. However, the petitioner/accused has got the liberty of disproving the same by producing any contrary evidence. In this case, the petitioner/accused had taken up the defence that he has already paid the amount that he owed to respondent and for which the respondent has already executed a receipt (Ex.D2). However, the respondent has denied the signature in Ex.D2. So the burden is upon the petitioner to prove before the Court that Ex.D2 - receipt executed by the respondent does contain the signature of the respondent. The petitioner has not taken any steps to compare the disputed signature in Ex.D2 with that of the admitted signature of the respondent and to discharge his burden.

11. It has been further observed by the Courts below that even during the cross examination of P.W.1, it was not suggested that P.W.1 has executed Ex.D2 - receipt. If really the respondent had executed Ex.D2 during his cross examination, he would confront with Ex.D2 by showing it to him. Without confronting P.W.1 with regard to Ex.D2, the accused later examined himself as D.W.1 and produced Ex.D2 - receipt. So the manner in which Ex.D2 was produced before the Court, would show that it was an after thought of the petitioner/accused and its genuineness is not proved.

12. Since the accused had omitted to prove the contrary and rebut the initial presumption that was drawn in favour of the respondent, the initial presumption coupled with evidence

becomes the conclusive proof. The Courts below have rightly appreciated the evidence on record and agreed the case of the complainant and found the accused guilty. Hence, I find no reason to interfere with the well-reasoned judgement of the Courts below.

In the result, this Criminal Revision Case is dismissed and the Judgement of the learned I Additional Sessions Judge, Erode dated 22.01.2016 passed in C.A.No.141 of 2015, is confirmed.

Sd/-

Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

Sni

To

1. The Judicial Magistrate,
   Fast Track Court No.1,
   Erode

2. The I Additional Sessions Judge,
   Erode.

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

4. The Public Prosecutor,
   Erode.

5. The Public Prosecutor,
   High Court, Madras.

Copy To

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

+1cc to Mr.I.C.Vasudevan, Advocate SR.No.67573

+1cc to Mr.R.Nalliyappan, Advocate SR.No.66499

Crl.R.C.No.695 of 2016

PL(CO)
GMY(08/03/2022)