



BAIL SLIP

The Appellant/Accused namely Sri Krishna Electricals rep by Authorised Signatory Mr.Rajendiran, M/36 years was directed to be released on bail in and by the order of this Court dated 29/04/2014 and made in Crl.MP.No.1 of 2014 in Crl.R.C.No.437 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.437 of 2014

Sri Krishna Electricals,
Rep.by Authorized Signatory,
Mr.Rajendiran, M/36 yrs.,
No.5, First Street, Kumaran Nagar East,
Tirupur Town, Tirupur District. ... Petitioner

Versus

Sri Thirumurugan & Co.,
Rep.by its Partner,
M.Kumar, M/42 yrs. S/o. Muthusamy,
No.126, Paramathi Road,
Namakkal. ... Respondent

Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code, to set aside the conviction and sentence dated 27.02.2014 passed in Crl.A.No.6 of 2013 on the file of the Learned Principal Sessions Judge, Namakkal, confirming the order passed in STC.No.205 of 2011, dated 04.01.2013, by the Learned Judicial Magistrate No.I, Namakkal and acquit the petitioner.

For Petitioner : Mr.K.A.Mariappan

For Respondent : No Appearance

ORDER

This Criminal Revision is filed by the petitioner/accused, aggrieved by the Judgment dated 04.01.2013, of the Learned Judicial Magistrate No.I, Namakkal in STC.No.205



of 2011, thereby finding the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and imposing a punishment of imprisonment for a period of one year and to pay a compensation to the complainant for the cheque amount of Rs.1,15,930/- (Rupees One Lakh Fifteen Thousand Nine Hundred and Thirty only), which was confirmed by the order dated 20.07.2014 of the Learned Principal Sessions Judge, Namakkal in CrI.A.No.6 of 2013.

2.Today when the matter came up for hearing, Mr.K.A.Mariappan, learned counsel for the petitioner by placing reliance on the typed set of papers filed before this court, argued on the basis of documents which were not produced before this Court and were not marked in the Trial. The first document is the mortgage deed, executed in consideration of a sum of Rs.9,50,000/- being the overdrawing of cash facility granted to him by M/s.Dhanalakshmi Bank. The second document is the statement of accounts on the relevant period viz., 1st February 2011 to 31st March 2011. By placing reliance on the said two documents, he would submit that as on the dates when the cheques were returned as dishonored, the overdrawing was availed by the petitioner/accused only for the amount of Rs.7,15,930/-. Therefore, the cheques were erroneously dishonored by the Bank. Further it is a vital and important plea, which was not pleaded either before the Trial Court or before the First Appellate Court, by mistake of the petitioner in not bringing the same to the notice of his counsel. Unless and otherwise an opportunity is not granted to the petitioner by remanding the matter back to the Trial Court and the same would result in miscarriage of Justice.

3.Though notice to the respondent/complainant is served, but, however, there is no appearance.

4.After considering the submissions made by the learned counsel for the petitioner, it is seen that the said defence prima facie supported by the documents on record, if found correct may be a valid defence. But, however if one has to go by this defense, there can be no two opinion that the complainant will be entitled for the cheque amount. Therefore when this Court posed the question, the Learned Counsel for the petitioner would agree to deposit 50% of the cheque amount, if an opportunity of re-trial being granted.

5.Considering the facts that (i) the ground of defence pleaded and (ii) the object of the complainant in a private complaint under section 138 of Negotiable Instruments Act being realizing the cheque amount, I am inclined to grant one more



opportunity to the petitioner/accused on a condition that the petitioner shall deposit 50% of the cheque amount of Rs.58,000/- (Rupees Fifty Eight Thousand only), within a period of four weeks from the date of receipt of a copy of this order, to the credit of STC. No.205 of 2011 and the complaint will be at liberty to withdraw the same. On such deposit, the Judgment of the Learned Judicial Magistrate No.I, Namakkal in STC. No.205 of 2011, dated 04.01.2013 and the Judgment of the Learned Principal District Sessions Judge, Namakkal in CrI.A. No.6 of 2013, dated 27.02.2014, shall stand set aside and STC.No.205 of 2011 shall stand remitted back to the file of the Judicial Magistrate No. 1, Namakkal, which shall be continued from the stage of defence evidence, enabling the petitioner/accused to lead such evidence for the defence pleaded before this Court and without being carried away by any of the observations made by this Court, the Trial Court shall proceed with the trial and determine the matter in accordance with the law.

6.It goes without saying that if the petitioner/accused failed to deposit the aforesaid amount of Rs.58,000/-, within the four weeks time, the Criminal Revision Case shall stand dismissed by confirming the conviction and sentence ordered by the aforesaid Judgments.

7.With the above observation and direction, this Criminal Revision Case is disposed off.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

klt

To

- 1.The Principal District Sessions Judge, Namakkal.
2. The Judicial Magistrate No.I, Namakkal.
- 3.The Chief Judicial Magistrate, Namakkal.

+lcc to Mr.K.A.Mariappan, Advocate SR.No.63765

CrI.R.C.No.437 of 2014

PL(CO)
GN(16/12/2021)