



BAIL SLIP

The appellant/accused namely Murthy @ Daniel Murthy, S/o.Thiruvengadam was directed to be released on bail in and by the order of this court dated 08.09.2014 and made in CRL.M.P.No.1 of 2014 in CRL.R.C.No.911 of 2014 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.911 OF 2014

Murthy @ Daniel Murthy

.. Petitioner

Versus

P.Selvaraj

.. Respondent

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records in CrI.A.No.179 of 2012 on the file of the learned I Additional District & Sessions Judge, Coimbatore and set aside the order, dated 22.08.2012 confirming the conviction and the sentence passed by the learned Judicial Magistrate, Fast Track Court, Magistrate Level-I, Coimbatore in C.C.No.370 of 2011 by a judgment, dated 28.05.2012 by allowing this Revision.

For Petitioner : M/s.N.Gomathi
Legal Aid Counsel

For Respondent : Mr.L.Baskaran
Government Advocate
(Criminal Side)

ORDER

This Criminal Revision is filed by the petitioner/accused, aggrieved by the judgment of the learned Fast Track Judicial Magistrate No.I, Coimbatore, dated 28.05.2012 in C.C.No.370 of

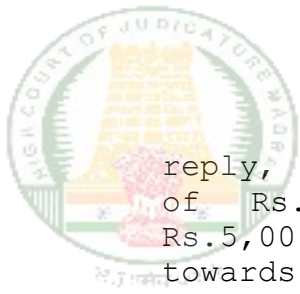


2011, convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act and imposing a sentence of Simple Imprisonment for a period of one year and fine amount of Rs.2,000/- and to pay the compensation of Rs.7,00,000/-, being the cheque amount, to the complainant and the judgment of the learned I Additional District and Sessions Judge, Coimbatore, dated 22.08.2012 in CrI.A.No.179 of 2012, confirming the conviction and sentence passed by the Trial Court.

2. This Revision is pending from the year 2014 and when the matter came up on 10.11.2021, the learned Counsel for the petitioner submitted that he is unable to lay hands on the bundle, in view of the inclement weather and sought an adjournment. However, on the subsequent hearings, on 24.11.2021, 06.12.2021 and 08.12.2021, the learned Counsel for the petitioner/accused was absent. Similarly, the complainant remained unserved and on 10.02.2021, fresh notice was ordered. Again on 13.08.2021, fresh private notice was ordered. Further, on 10.11.2021 also, fresh notice was ordered. However, no steps were taken on behalf of the learned Counsel for the petitioner. Under these circumstances, this Court directed the Inspector of Police, Peelamedu Police Station to serve notice on the complainant, P.Selvaraj, who stated to have been residing at No.24, 1st Street, Bharathi Colony, Peelamedu, Coimbatore - 641004.

3. The Inspector of Police had enquired at the address mentioned and one Lakshminarayanan claimed that he is the owner of the premises and there was no such a person called Selvaraj in the said premises. The premises is now being used by one Khadar, S/o.Ismail. He also enquired with the local post-woman, who also informed that the earlier letters were returned unserved because there was no such person in the said address. Under these circumstances, considering the nature of this revision and that the Criminal Revision Case filed by the accused cannot be kept eternally pending for want of service on complainant, this Court requested the learned Government Advocate (Criminal Side) himself to be an amicus representing the complainant in the matter.

4. This case arises out of a private complaint filed under Section 200 of Cr.P.C. The case of the complainant is that the petitioner/accused borrowed a hand loan of Rs.7,00,000/- from the respondent on 05.06.2008 and promising to repay the amount in two months. In repayment thereto, issued a cheque, dated 05.08.2008 and the said cheque was presented for collection on 07.08.2008, which was returned dishonoured due to insufficient funds. The complainant, therefore, issued a statutory notice on 11.08.2008. After receiving the notice, the petitioner sent a



reply, dated 14.08.2008 complaining that he borrowed only a sum of Rs.5,00,000/- and not Rs.7,00,000/-. Even out of Rs.5,00,000/-, the complainant had withheld a sum of Rs.50,000/- towards interest and another Rs.50,000/- towards broker commission and paid him only Rs.4,00,000/-. Out of Rs.4,00,000/-, the petitioner has re-paid a sum of Rs.1,00,000/- and therefore, the due was only Rs.3,00,000/- and therefore, even though the petitioner had given cheque only by way of security, the complainant filled up the same for a huge sum of Rs.7,00,000/-. Not accepting the reply, since the amount is not repaid within the statutory period, the complainant filed the private complaint.

5. The petitioner was issued summons and upon appearance and furnishing of copies under Section 207 of Cr.P.C., and upon being questioned, the accused denied the commission of offence. On behalf of the complainant, the complainant examined himself as P.W.1 and marked the cheque as Ex.P1; return memo as Ex.P2; the advocate notice as Ex.P3; the acknowledgment card as Ex.P4 and the reply notice, sent by the accused as Ex.P5. Upon being question about the incriminating circumstances and material evidence on record as per Section 313 of Cr.P.C., the accused denied the same as flase. Thereafter, the petitioner/accused examined himself as D.W.1. No documents were produced on behalf of the defence and the defense side was closed. The Trial Court proceeded to hear the learned Counsel for the complainant and the learned Counsel for the accused and by a judgment, dated 28.03.2012, found that even though the plea of the accused, that the cheque was issued only as a security, will not lead to acquittal in any way because it is settled legal position that even if the cheque is handed over by way of security, the complainant, being holder of the cheque, is entitled even to fill up and present the same for collection. Similarly, even though it is his case that sum of Rs.3,00,000/- is only due, absolutely, no document whatsoever was produced by him, to prove his case and therefore, since the defence has not done anything to rebut the presumption, held that the petitioner/accused is guilty of the offence under Section 138 of N.I.Act and sentenced as aforesaid.

6. Aggrieved by the same, the petitioner/accused preferred CrI.A.No.179 of 2012, on the file of the learned I Additional District and Sessions Judge, Coimbatore and by a judgment, dated 22.08.2012, the Appellate Court, after appraising the evidence independently, found that the accused has admitted the borrowing and also issuance of cheque and therefore, a presumption arises under Section 139 of the Negotiable Instruments Act. For the plea that the accused had borrowed lesser sum or he had discharged a part of the liability, there is nothing on record



to prove the same. Further, the Appellate Court also found that there is not even a suggestion to P.W.1 that only a blank cheque was issued. Under these circumstances, the lower Appellate Court confirmed the conviction and sentence of the Trial Court.

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7. Heard Ms. Gomathi, the Learned Legal Aid Counsel appearing on behalf of the petitioner/accused and Mr.L.Baskaran, learned Government Advocate (Criminal Side) as amicus for the complainant. The learned Counsel for the petitioner would submit that at the earliest point of time, by way of reply notice, the petitioner/accused had stated his defence and he had also got into the box and deposed as on the same lines of his reply notice and therefore, he had successfully rebutted the presumption. When PW-1 has not produced any further proof for advancing Rs. 7,00,000/- as loan, only the Oral Evidence of the complainant is there, which is rebutted by the Oral evidence of the accused and therefore, the courts below ought to have acquitted the petitioner. Per contra, the Learned Amicus appearing for the complainant would submit that as against the oral evidence of both parties about the amount of borrowal, the courts below rightly held that the complainant's case proved because of the presumption under Section 118 of the Negotiable Instruments Act.

8. I have considered the rival submissions of both sides. I have gone through the records. I am unable to accept the contention of the learned Counsel for the petitioner. As pointed out by the Trial Court as well as the lower Appellate Court, absolutely no material whatsoever was brought forth by the defence, so as to prove his allegation that he borrowed only a lesser amount and he had discharged a sum of Rs.1,00,000/- and only Rs.3,00,000/- is due under the transaction.

9. Under the above circumstances, the findings of the Trial Court as well as the Appellate Court deserve acceptance. I, therefore, find no merits in this Criminal Revision Case and the same is dismissed, confirming the conviction and sentence imposed by the Trial Court and the lower Appellate Court.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs



To

1. The I Additional District & Sessions Judge,
Coimbatore.
2. The Judicial Magistrate,
Fast Track Court,
Magistrate Level-I, Coimbatore.
3. The Chief Judicial Magistrate,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras.
5. The Superintendent
Central Prison, Coimbatore.

Copy To

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

Cr1.R.C.No.911 of 2014

KSM(CO)
RLP(10/01/2022)