



BAIL SLIP

The Petitioner/Accused namely M.Mathaiyan, S/o.Mariyappan was directed to be released on bail vide order dated 01.02.2018 made in Crl.M.P.No.1209 of 2018 in Crl.R.C.No.1174 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1174 of 2017
and
Crl.M.P.No.11184 of 2017

M. Mathaiyan ..Petitioner/Accused
S/o.Mariyappan
Vs.
V. Chandrasekaran ..Respondent/Defacto Complainant

PRAYER : Petition filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the order of conviction dated 22.02.2017 passed by the learned I Additional Sessions Judge, Erode in C.A.No.130 of 2016 confirming the judgment passed dated 15.06.2016 by the Judicial Magistrate FTC No.II, Erode, Erode District, in STC.No.302 of 2015.

For Petitioner : Mr. M. Senthilkumar

For Respondent : Mr. V. Kadhivelu

O R D E R

The matter is heard through "Video Conference".

2.Convicted accused is the revision petitioner herein.

3.The respondent/complainant filed complaint alleging that the case of the complainant is that the complainant is doing textiles business and the sole proprietor of his concern by name and the style of Sree Kanapathy textiles. The petitioner is a customer of the complainant and he purchased 2000 lungies from the complainant for Rs.1,58,000/- on 12.04.2013 as per packing slip No.22 and invoice No.20 on credit. Then he purchased 1500 lungies from the complainant for Rs.1,21,500/- on 19.04.2013 as packing slip No.27 and invoice No.25 on credit. Then he purchased 2000 lungies from the complainant for Rs.1,54,000/- on



11.05.2013 as packing slip No.49 in which staff signed and invoice Rs.43 credit.

3(a).Totally the petitioner purchased textile goods for the tune of Rs.4,33,500/- on credit from the complainant. But the petitioner paid only Rs.45,000/- and not paid the balance amount of Rs.3,88,500/-. Therefore, the complainant sent a message to the petitioner cell phone over complainant's cell phone to repay the amount. The balance amount of Rs.3,88,500/- is shown by the complainant in Trading and profit and loss account report for the year ended 31.03.2014 in connection with the Indian income tax. On the next day i.e., 12.01.2015, the petitioner met the complainant in his textiles office and issued a post dated cheque bearing No.045205 dated 10.04.2015 drawn on IDBI Bank, Erode in discharge of Rs.3,88,500/- and the petitioner assured that the cheque on 10.04.2015 through Karur Vysya Bank, Erode but the same was returned on 11.04.2015 as un paid due to funds insufficient in his IDBI Bank account with a return memo. Thereafter, the complainant issued a legal notice to the accused by registered post with acknowledgment card on 21.04.2015 calling upon the accused for the payment of the said amount due on the dishonour cheque within 15 days from the date of receipt of the notice. The accused received the notice on 22.04.2015 but failed to make payment.

3(b).Hence, the complainant filed the complaint in STC.No.302 of 2015 before the Judicial Magistrate FTC No.II, Erode and on 15.06.2016, the learned trial Judge was pleased to convict the appellant for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and imposed a fine of Rs.5000/- and in default in payment of fine to undergo simple imprisonment for a period of three months. Against which the petitioner filed the criminal appeal in C.A.No.130 of 2016 for setting aside the judgment passed in STC.No.302 of 2015 before I Additional Sessions Judge of Erode and on 22.02.2017, the appellate Court was pleased to pass an order for confirming the judgment passed in STC.No.302 of 2015 and dismissed the above same.

4. The petitioner preferred this criminal revision petition before this Court to set aside the order of conviction dated 22.02.2017 passed by the learned I Additional Sessions Judge of Erode in C.A.No.130 of 2016, confirming the judgment passed in STC.No.302 of 2015 dated 15.06.2016 by the Judicial Magistrate, Fast Track Court No.2, Erode for conviction of the appellant for the offence under Section 138 of Negotiable Instruments Act sentenced to undergo simple imprisonment for 1 year and also fine of Rs.5,000/- and default in payment of fine to undergo simple imprisonment for a period of three months.



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5. Aggrieved against the said order of conviction passed by the trial Court, the petitioner preferred the appeal in CrI.A.No.130/2016 and the same was dismissed on 22.02.2017 and hence, the criminal revision.

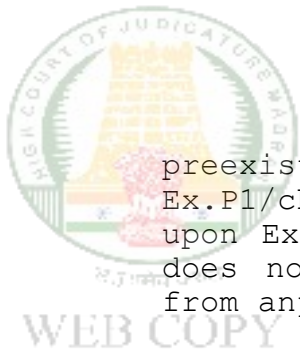
6. The learned counsel for the revision petitioner contended that legally enforceable debt was preexisting before Ex.P1/cheque is not proved in the manner known to law, but the complaint was filed by the individual capacity not in the name of the company and hence, relied upon the decision of the Hon'ble Supreme Court in (2019) SCC 615 and criminal appeal 964/2006 dated 10.10.2014.

7. Heard, the learned counsel for the respondent.

8. On perusal of the complaint as exempted before the lower Court, I find that the complaint proceeds on the basis that the sole proprietary of concern by name and the style of Sree Kanapathy textiles and hence, the proprietary concern is not a company and the decision relied upon by the petitioner counsel is not applicable. In the decision, I have rendered in CrI.R.C.No.954 of 2017 (S.Sathyamoorthy Vs. G.A.Palanisamy) dated 08.09.2021, so far as the proprietor concern is a concern that does not falls under Section 141 of the Negotiable Instruments Act and sole proprietor of proprietorship on individual capacity, the complaint is held to be maintainable, following the decision of the Hon'ble Supreme Court in 2007(5) SCC 103 (Raghu Lakshminarayanan Vs. M/s.Fine Tuber). Since the defacto complainant is a proprietor of the proprietorship, the above said decision relied on by the counsel for the petitioner is not applicable to the facts and circumstances of the case.

9. The next point that was alleged is that the complainant has not established the preexisting legally enforceable debt is a sole point has been raised. In this regard, the evidence of P.W.1 is that the petitioner purchased 2000 lungies from the respondent for Rs.1,58,000/- on 12.04.2013 as per packing slip No.22 and invoice No.20 on credit. Then he purchased 1500 lungies from the respondent for Rs.1,21,500/- on 19.04.2013 as per packing slip No.27 and invoice No.25 on credit. Then he purchased 2000 lungies from the complainant for Rs.1,54,000/- on 11.05.2013 as per packing slip No.49 in which his staff signed and invoice No.43 on credit.

10. Both the Courts below have appreciated the evidence on proper prospective and held that in view of Ex.P9, the complainant has supplied 2000 lungies, with regard to the said existing debt which is legally enforceable debt as on the date of the issuance of Ex.P1/cheque has held that there is



preexisting legally enforceable behind the issuance of Ex.P1/cheque and hence, in view of the concurrent finding based upon Ex.P9, I find that the finding rendered by the Court below does not warrant any interference as the same does not suffer from any irregularity or illegality warranting interference.

11. Furthermore, based upon Exs.P1 and P2 and the endorsement thereon and legal notice issued, therefore, both the Courts below have rightly and concurrently held that the private complainant/respondent is entitled for presumption under Section 139 of Negotiable Instruments Act, which is rebuttal presumption. However, the revision petitioner has failed to rebut the same and hence, the conviction laid by both the Courts below under Section 139 of Negotiable Instruments Act, is held to be sustainable in law.

12. On the point of quantum of punishment, after going through the alleged act, I find that the period of sentence be reduced from one year to nine months and fine amount as awarded by the trial Court is hereby confirmed.

13. Accordingly, the criminal revision case is partly allowed to the limited extent as indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

AT

To

1. The I Additional Sessions Judge, Erode.
2. Do Thro The Principal Sessions Judge, Erode.
3. The Judicial Magistrate FTC No.II, Erode, Erode District.
4. Do Thro The Chief Judicial Magistrate, Erode.
5. The Superintendent, Central Prison, Coimbatore.

CrI.R.C.No.1174 of 2017 and
CrI.M.P.No.11184 of 2017

RSI (CO)
RGA(08/12/2021)