



## Bail Slip

The Petitioner/Accused namely Paramasivam was directed to be released on bail in and by the order of this Court dated 21.09.2017 and made in CrI.R.C.No.1247 of 2017 and CrI.M.P.No.12053 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2021

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

CrI.R.C.No.1247 of 2017

Paramasivam

.. Petitioner/Accused

Vs.

K.Satheeshkumar

.. Respondent/Complainant

PRAYER : Criminal Revision Cases have been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment passed by the I Additional District and Sessions Judge of Tiruppur in C.A.No.121 of 2016 dated 01.08.2017 confirming the judgment passed by the Judicial Magistrate/Fast Track Court, Tiruppur in C.C.No.262 of 2013 dated 18.10.2016 and acquit the petitioner/accused.

For Petitioner : Mr.V.S.Kesavan

For Respondent : Mr.Suresh  
for Mr.D.Gopal

ORDER

This Criminal Revision Case has been filed challenging the judgment of the learned I Additional District and Sessions Judge, Tiruppur, dated 01.08.2017 passed in C.A.No.121 of 2016, confirming the judgment of the learned Judicial Magistrate/Fast Track Court, Tiruppur, dated 18.10.2016 passed in C.C.No.262 of 2013.

2. This case has arisen out of a private complaint given by the respondent/complainant. The defacto complainant is doing business in supplying hosiery yarns under the name and style of Mahilan Yarns. The petitioner/1<sup>st</sup> accused is the proprietor of his business concern by name B.A.B Garments. It is



alleged that the petitioner/1<sup>st</sup> accused was having business transactions with the respondent/complainant and during that course, he had some dues payable to the respondent. In order to discharge the dues, the petitioner/1<sup>st</sup> accused issued 3 cheques dated 05.09.2011, 06.09.2011 and 12.10.2011 drawn on City Union Bank, Tirupur, for the sums of Rs.2,52,000/-, Rs.3,60,000/- and Rs.1,46,000/- respectively. All together the petitioner/1<sup>st</sup> accused had given 3 cheques for a total sum of Rs.7,58,000/-. When the respondent/complainant presented the cheque for collection on 24.10.2011 and 29.10.2011, they were returned with an endorsement "payment stopped by the drawer". After issuing the statutory pre-litigation notice and complying the legal mandates, the respondent/complainant has filed the private complaint against the petitioner/1<sup>st</sup> accused to take action under Section 138 r/w 142 of the Negotiable Instruments Act. Since the 1<sup>st</sup> accused denied his involvement, trial was conducted.

3. During the course of the trial, on the side of the respondent/complainant, three (3) witnesses were examined as PWs.1 to 3 and fifteen (15) documents were marked as Exs.P1 to 15. On the side of the petitioner/1<sup>st</sup> accused, one witness was examined as DW.1 and two (2) documents were marked as Exs.D1 & 2.

4. After the conclusion of the trial and on considering the materials available on record, the learned trial Judge found the accused guilty for the offence under Section 138 of the N.I.Act, convicted and sentenced him to undergo one year Simple Imprisonment and imposed a fine of Rs.1,000/-; in default to undergo further Simple Imprisonment for a period of one month. Against the said conviction, the petitioner/accused has filed an appeal in C.A.No.121 of 2016 before the learned I Additional District and Sessions Judge, Tirupur, which was dismissed by confirming the judgment of the trial Court. Aggrieved over that, this Criminal Revision Case has been filed by the petitioner/1<sup>st</sup> accused.

5. Heard the learned counsel for the petitioner/1<sup>st</sup> accused and the learned counsel for the respondent/complainant.

6. The learned counsel for the petitioner/1<sup>st</sup> accused submitted that the Courts below have failed to appreciate the evidence in proper perspective and omitted to give the benefit of preponderance of probability to the accused; the specific defence of the petitioner is that the defacto complainant, in collusion with the 2<sup>nd</sup> accused who is the Manager of the 1<sup>st</sup>



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accused garments had misused the cheques of the 1<sup>st</sup> accused for the purpose of filing this case; the 1<sup>st</sup> accused has given a criminal complaint against the 2<sup>nd</sup> accused and the charge sheet has also been filed in that case.

7. The learned counsel for the respondent/complainant submitted that once the execution of the cheque is admitted, the presumption under Section 139 of N.I.Act goes in favour of the complainant, unless the contrary is proved. He further submitted that the petitioner/accused did not rebut the initial presumption in favour of the respondent/complainant and hence the judgment of the Courts below did not require any interference.

8. Points for consideration:

Whether the finding and judgment of the lower appellate court suffer from any unfairness, impropriety or illegality?

9. The fact that the petitioner/1<sup>st</sup> accused and the respondent/complainant are known to each other is not denied. The petitioner/1<sup>st</sup> accused and the respondent/complainant have been in touch with each other. During the said business dealing, the respondent/complainant is doing his business in supplying yarn and it is his specific allegation that he had supplied the yarn to the petitioner's garment also. In order to substantiate the above contention on the side of the respondent/complainant Exs.P10 to 12 have been filed. However, the learned counsel for the petitioner/1<sup>st</sup> accused submitted that with these records produced before this Court, the transaction amounting to Rs.7,58,000/- as claimed by the respondent/complainant through the cheques were not proved and the Courts have not appreciated the same.

10. Before venturing into the veracity of the business transaction, it is to be noted that once the execution of the cheque is admitted by the drawer, an initial presumption has to be drawn that the cheques were executed for discharging a legally enforceable debt or liability. However, the initial presumption can be rebutted by the accused by producing any contrary evidence. It is not the case of the petitioner/1<sup>st</sup> accused that the complainant did not have any financial wherewithal to support him with the business to the tune of Rs.7,58,000/-. His only contention is that the cheque belonging to the petitioner was misused with the help of 2<sup>nd</sup> accused for the purpose of this case. It is seen from the complaint Ex.D1,



that the complaint has been given only against the 2<sup>nd</sup> accused and not against the complainant. Neither the charge sheet has been filed against the complainant basing on Ex.D1 complaint. In order to sustain criminal action against the holder of the cheque for dishonour, it is sufficient to furnish prima facie proof that can probabalise the transaction. And that itself will entitle the complainant to get the benefit of initial presumption under sec.139 N.I.Act. The proof of liability for money as required in civil suit for recovery of money is not needed in for the cases filed under sec.138 N.I.Act.

11. However the petitioner/1<sup>st</sup> accused has got the liberty to rebut the initial presumption by way of exposing the improbabilities in the case of the complainant. With the production of Ex.D1 complaint against the 2<sup>nd</sup> accused alone the 1<sup>st</sup> accused can not claim that he had defeated the case of the complainant. The second accused is the own employee of the 1<sup>st</sup> accused. Some relevance has to be established between Ex.D1 and the respondent/complaint. When the business transactions between petitioner and the respondent were not denied, it is probable that the petitioner could have owed money to the respondent.

12. The learned counsel for the petitioner/accused relied on the judgment of the Hon'ble Supreme Court rendered in Basalingappa -vs- Mudibasappa reported in 2019 (5) SCC 418 in support of his contention that even if the petitioner/accused need not come to the witness box to prove the improbabilities and weaknesses in the case of the complainant. In the said judgment, it is held as under:-

13. This Court in Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35] had occasion to consider Section 118(a) of the Act. This Court held that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable and defendant can prove the non-existence of a consideration by raising a probable defence. In para 12, the following has been laid down : (SCC pp. 50-51)

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is



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rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon his failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

14. S.B. Sinha, J. in *M.S. Narayana Menon v. State of Kerala* [M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] had considered Sections 118(a), 138 and 139 of the Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions "may presume" and "shall presume" referring to an earlier judgment, the following was held in para 28 : (SCC p. 49)

"28. What would be the effect of the expressions "may presume", "shall presume" and "conclusive proof" has been considered by this Court in *Union of India v. Pramod Gupta* [*Union of India v. Pramod Gupta*, (2005) 12 SCC 1] , in the following terms : (SCC pp.



30-31, para 52)

'52....It is true that the legislature used two different phraseologies "shall be presumed" and "may be presumed" in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-à-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words "shall presume" would be conclusive. The meaning of the expressions "may presume" and "shall presume" have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression "shall presume" cannot be held to be synonymous with "conclusive proof".' "

15. It was noted in M.S. Narayana Menon case [M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] , that the expression "shall presume" cannot be held to be synonymous with conclusive proof. Referring to definition of words "proved" and "disproved" under Section 3 of the Evidence Act, 1872 the following was laid down in para 30 : (SCC p. 50)

"30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon."

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20. A three-Judge Bench of this Court in Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] had occasion to elaborately consider the provisions of Sections 138 and 139. In the above case, the trial court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed [Mohan v. Rangappa, 2005 SCC OnLine Kar 783] the judgment of the trial court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. In para 13, the following has been laid down : (SCC p. 446)

"13. The High Court in its order [Mohan v. Rangappa, 2005 SCC OnLine Kar 783] noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable."

13. There is no disagreement on the point that the first accused has got the liberty to protect improbabilities in the case of the respondent/complainant and get the benefit of rebuttal proof. But here is a case where the relationship between the petitioner and the respondent is not denied and even the material evidences are produced to show that the petitioner and the respondent have been doing business transactions for a considerable length of time. The Courts below have appreciated the position of law with regard to initial presumption in correct perspective and found the accused guilty on the basis of material available before the court. Hence I find no reason for interference.

14. In the result, this Criminal Revision Case stands dismissed. The judgment of the Judicial Magistrate/Fast Track



Court, Tiruppur, dated 18.10.2016 passed in C.C.No.262 of 2013 is confirmed. The trial Court is directed to issue Non Bailable Warrant for securing the accused and sending him to prison for undergoing the sentence.

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Sd/-  
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,  
Tiruppur.
2. -do- Through Principal Sessions Judge,  
Tiruppur.
3. The Judicial Magistrate/Fast Track Court,  
Tiruppur.
4. The Chief Judicial Magistrate,  
Tiruppur(For information)

Copy To

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

+1cc to Mr.D.Gopal, Advocate SR.No.64525

+1cc to Mr.V.S.Kesavan, Advocate SR.No.64325

CrI.R.C.No.1247 of 2017

PL(CO)  
GMY(11/02/2022)