Bail Slip

The Petitioner /Accused namely K.Rajendran S/o. Kamatchi was released on bail dated 15/03/2017 in Crl MP. 3909/2015 in Crl.RC. 418/2017,and his surrender was exempted for a period of two weeks.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 15.12.2020	Orders pronounced on 01.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.R.C.No.418 of 2017
and
Crl.M.P.Nos.3909 and 3910 of 2017

K.Rajendran ...Petitioner/Appellant

..vs..

C.K.Ramasamy ... Respondent

This Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C. against the judgment made in Crl.A.No.73 of 2015 on the file of the II Additional District and Sessions Judge, Tiruppur, dated 18.11.2016 confirming the judgment made in C.C.No.218 of 2014 on the file of the Judicial Magistrate Court (Fast Track Court), Tiruppur, dated 29.07.2015.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.P.M.Duraiswamy

ORDER

This Criminal Revision Case is filed against the judgment of the learned II Additional District and Sessions Judge, Tiruppur in Crl.A.No.73 of 2015 confirming the judgment of the learned Judicial Magistrate (Fast Track Court), Tiruppur in C.C.No.218 of 2014.

2. The respondent, as the complainant, filed a complaint under Section 138 of Negotiable Instruments Act alleging that the appellant borrowed a sum of Rs.7,00,000/- from the

respondent on 06.08.2012 as a hand loan to meet his urgent family and business needs and executed a promissory note promising to pay the principal with interest at 12% p.a. The appellant issued cheque bearing No.976910 for Rs.7,00,000/- drawn on Corporation Bank, Tiruppur to settle the loan. The respondent presented the cheque for collection through his bank "Corporation Bank, Tiruppur" on 15.05.2013. The cheque was returned for the reason that 'there was no sufficient fund' on 16.05.2013. The respondent issued the legal notice on 18.05.2013 and the same was returned on 21.05.2013 with an endorsement that 'notice was not claimed.' Even after knowledge of issuance of notice, the respondent has not paid the cheque amount within the stipulated time. Therefore, this complaint was filed.

3. After the appellant entered appearance, he was questioned with regard to the substance of accusation levelled against him. The accused denied the accusation and demanded trial. During the course of trial, on the side of prosecution, PW.1 and PW.2 were examined and Exs.P1 to P5 were marked. On the side of the accused, no witness was examined, but Exs.D1 and D2 were marked. On considering the oral and documentary evidence produced before the trial Court, the learned trial Judge found the appellant was guilty under Section 138 of Negotiable Instruments Act and convicted him and sentenced him to undergo six months imprisonment and to pay a fine of Rs.1,000/-, in default to pay the fine, to undergo simple imprisonment of one month. Against the said judgment, the appellant preferred appeal before the learned II Additional District and Sessions Judge, Tiruppur in Crl.A.No.73 of 2015. The learned II Additional District and Sessions Judge found that there was no reason to interfere with the judgment of the trial Court and confirmed the judgment. Against the said judgment, this Criminal Revision is filed.

4. The learned counsel appearing for the appellant submitted that there was a loan transaction between the appellant and respondent in 2006. The cheque in question was issued as a security for the said loan transaction. Subsequently, the appellant executed Ex.D1 - sale deed in favour of the respondent for the settlement of the loan obtained from him. Taking advantage of the cheque issued as a security for the loan transaction in 2006, this case has been filed by the respondent for getting unjust enrichment. The appellant had taken steps for marking deposition of one Kathirvelu and production of Income Tax Return of the respondent. Those applications were dismissed by the learned II Additional District and Sessions Judge. The learned II Additional District and Sessions Judge, without considering the evidence in proper perspective and without giving opportunity to the appellant to

adduce additional evidence, has wrongly appreciated the evidence and dismissed the appeal.

5. Per contra, learned counsel appearing for the respondent submitted that the appellant had admitted the cheque and the signature found in the cheque are that of him. The sale deed executed by the appellant in favour of the respondent is altogether a different transaction. That has nothing to do with the borrowal of money from the appellant by the respondent and issuance of cheque without sufficient funds in his account. Though the respondent issued notice, no reply was sent by the appellant. The cheque was issued subsequent to the sale deed, ie., on 15.05.2013. Both the courts below have considered the evidence in proper perspective and rightly dismissed the appeal. Therefore, the learned counsel for the respondent prayed for dismissal of this Criminal Revision Case by confirming the judgments of the Courts below.

6. It is seen from the oral and documentary evidence produced in this case, the promissory note has been marked as Ex.P1, the cheque was marked as Ex.P2 and the cheque returned memo was marked as Ex.P3, legal notice was marked as Ex.P4, Postal returned cover was marked as Ex.P5. The respondent had marked the copies of the sale deeds dated 11.02.2013 and 29.11.2013 as Exs.D1 and D2. The defence that was taken by the appellant is that he had loan transaction with the respondent in 2006 and the cheque was issued as a security for the loan transaction. Subsequently, he executed a sale deed in favour of the respondent for discharging that loan. Even after the execution of sale deed, this case has been instituted using the cheque which was given as security in 2006. However, in order to substantiate this case of the appellant, the appellant has not produced any acceptable evidence. Though a suggestion was made to PW.1, the respondent, that Ex.D1 sale deed was executed for discharging the loan obtained from him and that this case was filed using the cheque given at the time of receiving the loan, the appellant has not produced any iota of evidence to prove this case. As rightly pointed out by the learned counsel for the respondent that the cheque was dated 15.05.2013. Ex.D1 sale deed was executed on 11.02.2013. The cheque is subsequent to the sale deed. It is seen from the returned postal cover that though intimation was given with regard to the registered post, the appellant had not received the notice. Since he had not received the notice, he did not give any reply to the notice. If he had executed the sale deed for discharging the loan, why did he not get back the cheque which was given as a security for the loan there is no explanation whatsoever from the appellant in this regard.

7. The learned counsel for the appellant tried to impress

the Court by stating that the respondent has not produced his Income Tax Return to show the loan transaction and therefore, there is suspicion with regard to the alleged loan transaction and issuance of cheque. It is true that the respondent has not produced his Income Tax Return to show the loan transaction and Exs.D1 and D2 sale transactions. Merely because the respondent has not produced the Income Tax Return, we cannot draw adverse inference against the respondent. The non-filing of Income Tax Return may be a ground for prosecuting the respondent under the relevant provisions of Income Tax Act and not for throwing this case out of consideration, especially when the appellant admitted Ex.P2 cheque as his cheque and the signature in the cheque as that of him. How is the deposition of Kathirvelu relevant. Nothing is said during the course of argument. Unless the relevancy of the deposition of Kathirvelu is brought out, the denial of permission to mark this deposition cannot be faulted. It is seen from the Ex.P2 that when the cheque was presented for collection, there was no sufficient fund and the cheque was returned for the reason that there was no sufficient fund. PW.2 had also supported the case of the respondent with regard to the borrowal of loan and issuance of cheque. Thus the evidence produced in this case clearly establishes the case of the respondent that the appellant borrowed a sum of Rs.7,00,000/- from the respondent on 06.08.2012 and issued Ex.P2 cheque for discharging that loan without sufficient fund in his account. The Courts below properly appreciated the evidence and rightly convicted the appellant under Section 138 of Negotiable Instruments Act and imposed suitable punishments. This Court finds no reason to interfere with the judgments of Courts below.

8. In this view of the matter, this Criminal Revision Case is dismissed by confirming the judgment of the learned II Additional District and Sessions Judge in Crl.A.No.73 of 2015 dated 18.11.2016 and the trial Court is directed to issue warrant against the accused for undergoing the sentence. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS I)

/true copy

Sub Asst. Registrar

mra

To
1.The II Additional District and Sessions Judge, Tiruppur.

2.The Judicial Magistrate (Fast Track Court), Tiruppur.

3.Do thro the Chief Judicial Magistrate, Tiruppur.

+1CC to M/s. S.Doraisamy, Advocate SR No. 5346

Pre-delivery Order in
Crl.R.C.No.418 of 2017
and
Crl.M.P.Nos.3909 and 3910 of 2017

AJS(CO)
NRA(12/02/2021)