



Bail Slip

That the Appellant / Accused namely Sanjai Gandhi S/o.Manickam was released on bail as per order of this Court dated 05.07.2017 made in CrI.R.C.No.891 of 2017 in CrI.MP.No.8361 of 2017 of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 20.10.2021	Date of Pronouncing Order 29.10.2021
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.891 of 2017

Sanjai Gandhi ...Petitioner/Accused
Vs.
K. Arunachalam ...Respondent/Complainant

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, against the judgment dated 07.03.2017 in C.A.No.84 of 2016 on the file of the II Additional District and Sessions Judge, Salem confirming the judgment dated 01.08.2016 in STC.No.40 of 2014 on the file of the Judicial Magistrate, FTC, Omalur.

For Petitioner : Mr.N.Karthikeyan
For Respondents : Mr.T.Ganesan

O R D E R

The matter is heard through "Video Conference".

2. Convicted accused is the revision petitioner herein.

3. The respondent/private complainant filed S.T.C.No.40/2013, before the learned Judicial Magistrate, Fast Track Court, Omalur, for the offence under Section 138 of Negotiable Instruments Act.

4. After observing the procedure, the case was taken on file and after trial, the case was ended in conviction and sentence.

5. This revision petition is filed against the judgment dated 07.03.2017 in C.A.No.84 of 2016 on the file of the II

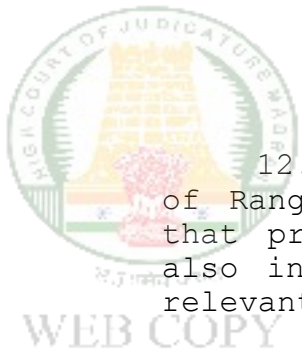


6. The learned counsel for the revision petitioner would contend that the revision petitioner/accused had issued two post dated cheques for a sum of Rs.60,000/- bearing cheque No.503363 & for a sum of Rs.1,60,000/- bearing cheque No.503362. When the cheques were presented on 03.03.2014 for collection, at Indina Bank, Pannappatty Branch, cheques were returned on 04.03.2014 with an endorsement "funds insufficient". Hence, the complainant had issued a legal notice to the accused on 01.04.2014, demanding aforesaid amount and it served upon the revision petitioner on 02.04.2014 but, the accused neither replied nor made payment. Hence, the complainant has lodged a complaint on 17.04.2014 and hence, the private complaint premature.

8. Before the trial Court, the private complainant is examined as P.W.1 and P.W.2 is also examined. Exs.P1 to P8 were marked. On behalf of the defence, no oral or documentary evidence was marked. The return memo cheques are marked as Exs.P1 and P2 and endorsement thereon are Exs.P5 and P6.

10. I find nothing in the cross examination of P.W.1 and P.W.2 to discard their evidence. In the absence of anything in the cross examination coupled with the fact that the signature in the petition-cheque and issuance of the cheque from the account of the accused being not disputed, the trial Court rightly drew the presumption.

<https://hcservices.ecourts.gov.in/hcservices/>



12. It has been held by Hon'ble Supreme Court in the case of Rangappa Vs. Mohan reported in 2010 (11) SCC 441 that presumption of Section 139 of Negotiable Instruments Act also includes the existence of legally enforceable debt. The relevant para of the said judgment reads as under:

14. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability.

13. Hence, in view of the pronouncement of the Hon'ble Supreme Court that the presumption mentioned in Section 139 is a presumption of law and not presumption of fact, such a presumption is statutory presumption which includes the existence of legally enforceable debt and thus, it is for the revision petitioner/accused to rebut the statutory presumption by probabilising the suggestive case.

14. The learned counsel for the revision petitioner would contend that the respondent/private complainant is not having sufficient financial capacity to lend Rs.2,20,000/- and the non-examination of Sivakumar is fatal to the prosecution and there is no legally enforceable debt. At the outset, the respondent has not let in any oral or documentary evidence. No doubt, it is true that they need not let in nor he required to step in witness to depose his case. However, the accused is entitled to probabilise the defence theory from the answer elicited in the cross examination.

14(a) Admittedly, he has not let in evidence to show that the private complainant was not having any financial capacity to let the cheque amount. But, even the suggestions made to P.W.1 to go to show that P.W.1 is having sufficient funds. Besides, in view of the statutory presumption, as stated by the Hon'ble Supreme Court, as cited supra which includes legally enforceable debt and its existence.

15. It is the specific plea by the defence that the cheque in issuance was given to Sivakumar only as security of payment for Rs.1,20,000/- and hence, Sivakumar, is material evidence for the accused and not for the private complainant and hence, all the three points raised by the learned counsel for the revision petitioner stands rejected. The last point raised by the private complainant is that the private complaint is premature.

16. On perusal of the documents filed before the trial Court, I find that the cheque in issuance was dated on 03.03.2014 and was returned on 04.03.2014 and legal notice was



issued on 01.04.2014 and it was received and acknowledged by the accused on 02.04.2014 and hence, after expiry of 15 days namely 17.04.2004, the complaint has been filed before the learned Judicial Magistrate as could be seen from the Court seal affixed on the private complaint and thus, I find that the legal notice after expiry of 15 days has been given and the complaint has been lodged after expiry of 15 days from the service of the legal notice and hence, the last point on technicality also stands negatived. This Court finds that all the contentions raised by the revision petitioner stand negatived and the conviction passed by the learned Sessions Judge is well considered and well merited and does not need any interference at this revisional jurisdiction. Accordingly, this revision petition is devoid of merits and liable to be dismissed.

17. In the result, the criminal revision case stands dismissed. Conviction and sentence passed by the both the Courts below are hereby confirmed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

AT
To

1. The Judicial Magistrate,
FTC, Omalur.
2. -do through- The Chief Judicial Magistrate,
Salem.
3. The Principal District Judge,
Salem.
4. The II Additional District and Sessions Judge,
Salem.
5. The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.N.Karthikeyan, Advocate, S.R.No.56959

Cr1.R.C.No.891 of 2017

MG[co]
NSK 16/11/2021