



**BAIL SLIP**

**C.Raja, S/o.Chennimalai, male aged about 39 years/2016, (Sole Accused), was released on bail vide court order dated 29.03.2016 made in CRL MP(MD).2617 of 2016 in CRL RC(MD).182 of 2016.**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02.02.2021**

**CORAM :**

**THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**Crl.RC(MD)No. 182 of 2016**

C. Raja ... Petitioner/Appellant/Sole accused

Vs.

L. Thirumalaisamy ...Respondent/Respondent/Complainant

**PRAYER:** Petition filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the Judgment of conviction, dated 03.02.2016 made in C.A. No. 19 of 2014 on the file of the learned Principal Sessions Judge, Dindigul District, Dindigul, by confirming conviction and sentence made in STC No. 667 of 2010 on the file of the Judicial Magistrate Court, Oddanchathiram, dated 15.04.2014 and allow this Criminal Revision Petition and acquit the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.A. Saravanan

For Respondent : Mr.S. Karthik

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**ORDER**

This criminal revision case is filed as against the concurrent findings on a complaint instituted under Section 138 of the Negotiable Instruments Act.

2. The trial Court, namely, the learned Judicial Magistrate, Oddanchatram, found this petitioner guilty under Section 138 of the Negotiable Instruments Act in S.T.C No.667 of 2010 and by order dated 15.04.2014, convicted and sentenced him to undergo rigorous imprisonment for One year and to pay a fine of Rs.5000/-, i/d to undergo simple imprisonment for One month. As against the conviction and sentence, the petitioner has preferred an appeal and the learned Principal Sessions Judge, Dindigul, by order dated 03.02.2016, in C.A.No.19 of 2014 confirmed the conviction and sentence imposed by the trial Court. Aggrieved over the same, the petitioner has preferred the instant revision case.



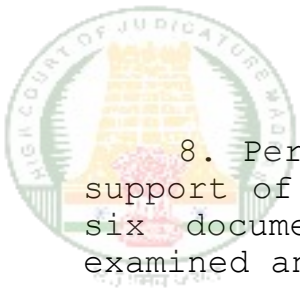
3. The case of the respondent/complainant is that the petitioner/accused borrowed a sum of Rs.1,50,000/-, as hand loan from him, agreeing to repay the same within three months and in order to discharge the said liability, had also handed over a cheque, dated 06.11.2008 bearing No.5964902. When the respondent/complainant presented the said cheque, the same was returned with an endorsement 'insufficient funds'. Therefore, the complainant, after issuing a notice calling upon the petitioner/accused to make the payment as required under Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, filed the complaint, after the statutory period. The petitioner has borrowed a sum of Rs.90,000/- from one Krishnasamy, who is brother of complainant and issued cheque to him and he has also filed I.P. No.1 of 2009 against that Krishnasamy and some others. Both the Courts below have found the petitioner/accused guilty and aggrieved, the petitioner has preferred the instant revision case.

4. Heard Mr.A. Saravanan, learned Counsel for the petitioner / accused. There is no representation for the respondent / complainant.

5. Mr.A. Saravanan, learned Counsel for the petitioner/accused contended that the petitioner has not borrowed any loan at all, as alleged by the complainant. He further contended that the complainant admitted that the cheque was filled up by his brother and it was suggested by the accused that his brother filled up the cheque and asked him to realise the same. He further contended that the Branch Manager admitted that the date in which the cheque was remitted into Bank was not mentioned and he has also admitted that the complainant signed as Thirumalsamy and also admitted that the cheque number has not been filled in the Bank Chalan. Therefore, the learned Counsel further contended that a false case has been foisted against him and prays for interference.

6. The learned counsel appearing for the respondent/complainant submitted that the petitioner/accused clearly admitted the signature and in his reply, he has stated that he has issued a blank cheque in favour of one Krishnasamy. He further submitted that the petitioner/accused has filed IP against Kannaiyan who is brother of the accused in I.P. No. 1 of 2009 and he admitted that he knew the complainant and his brother. He further submitted that the petitioner/accused had borrowed money from various persons, but not returned to anybody. Hence, he prayed for dismissal of the Criminal Revision Cases.

7. This Court has paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the documents placed on record.



8. Perusal of record shows that the respondent/ complainant, in support of his case, examined two witnesses as PW1 & PW2 and marked six documents. On the side of the petitioner/accused DW1 was examined and marked five documents.

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9. The Criminal Revision case arisen out of conviction and sentence imposed by the learned Judicial Magistrate, Oddanchatram, in STC No.667 of 2010, dated 14.04.2014 and against the Judgment in C.A. No. 19 of 2014.

10. The cheque is belonged to the petitioner/accused. Signature in the cheque is also by the accused. His only objection is that, he did not borrow money from the complainant. He has borrowed a sum of Rs.90,000/-from one Krishnasamy, who is brother of complainant and issued cheque to him. He also filed I.P. No.1 of 2009 against that Krishnasamy and some others. Therefore, the Krishnasamy issued a cheque to the complainant and filed the criminal case in STC No. 667 of 2010. In support of his case, he quoted the evidence of PW1's cross examination. In the cross examination of PW1, he had stated that the cheque was filed by his brother Ranganathan. Once the accused has admitted his signature on the cheque he could not escape from his liability on the ground that the same has not been filled in by him. A person issuing a blank cheque must know the consequences.

11. The complainant had presented the cheque on 05.02.2009 only after that the petitioner/accused filed I.P.No.1 of 2009, against the brother of the complainant. In I.P. No.1 of 2009, he never stated that he issued blank cheque to the brother of the complainant.

12. The ingredients of Section 138 of the Negotiable Instruments Act is extracted under:-

" 138. Dishonour of cheque for insufficiency, etc., of funds in the account-

*Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to [two years] or with fine*



which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless -

(a). the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within [thirty] days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice".

13. In the case on hand, according to the complainant, he gave money to the petitioner/accused and the cheque was issued by the accused. Cheque is belonged to the accused. His signature was also admitted by him.

14. The relevant portion of the Judgment reported in 2013 (1) MWN (Crl.) DCC 85 (Mad.), is extracted hereunder:

"If two views are possible, Court has to adopt view which is favourable to accused and should not interfere with findings of the acquittal passed by the Lower Court."

15. The scope of Criminal Revision under Section 397 r/w 401 Cr.P.C. is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

16. This Court in **Anbarasu Vs Mukanchand Bothra**, reported in **2019 (3) MWN (Cr) DCC 1(Mad)**, has held that while exercising the revisional powers under Section 397 r/w 401 Cr.P.C., the Court is required to find out whether there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum.

17. The petitioner / accused has not made out any ground to show that there is any illegality, perversity or impropriety in the findings of the Courts below. In such view of the matter, this Court



is not inclined to interfere with the order passed by the learned Judicial Magistrate Court, Oddanchathiram, in STC No.667 of 2010, dated 15.04.2014, as confirmed by the learned Principal Sessions Judge, Dindigul District, Dindigul, in C.A. No. 19 of 2014, dated 03.02.2016.

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18. In fine, this Criminal Revision Case is dismissed. Since the petitioner/accused is in bail, the trial Court is directed to secure and confine him, in accordance with law. Bail bonds, if any executed, shall stand terminated.

Sd/-

Assistant Registrar(AD-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Principal Sessions Judge, Dindigul District, Dindigul,
2. The Judicial Magistrate Judge, Oddanchathiram.
3. The Chief Judicial Magistrate, Dindigul District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
5. The Section Officer, Criminal Section (Records),  
Madurai Bench of Madras High Court,  
Madurai(2 copies).

+1 CC to M/s.A.SARAVANAN, Advocate ( SR-2987[F] dated 03/02/2021 )

**Order made in  
Crl.RC(MD)No. 182 of 2016  
02.02.2021**

MJ(CO)

TR(16.02.2021) 5P 8C