

**BAIL SLIP**

Mr.Amanullah,s/o,Aasan Mohammed, male, aged about 53 years/2016
(Accused was released on bail vide court order dated 15.07.2017 made
in CRL.MP(MD).3892/2016 in CRL.RC.(MD).289/2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	19.01.2021
DELIVERED ON	03.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**Crl.RC(MD)No. 289 of 2016**

Amanullah ... Revision Petitioner/Appellant/Accused
Vs.

P. Prabakaran ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the Judgement passed by the learned Additional District Judge, Dindigul in C.A. No.36 of 2013 dated 17.12.2015 in confirming the Judgment and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Palani in STC No. 1 of 2013 dated 18.04.2013 and set aside the same and acquit the revision petitioner.

For Petitioner : No Appearance
For Respondent : Mr.N. Saravanan

O R D E R

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, Fast Track Court, Palani, found this petitioner guilty under Section 138 of the Negotiable Instruments Act in S.T.C. No.1 of 2013 and by order dated 18.04.2013, convicted and sentenced him to undergo simple imprisonment for three months and to pay compensation of Rs.2 Lakhs in default, to undergo further period of simple imprisonment of One month. As against the conviction and sentence, the petitioner has preferred an appeal and the learned III Additional Sessions Judge, Dindigul, by order dated 17.12.20215, in C.A.No.36 of 2013 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 and respondents are friends. The revision petitioner has borrowed a sum of Rs.2 Lakhs from the respondent/complainant on 07.10.2012 as a hand loan and issued a post dated cheque bearing No.584864, dated 19.10.2012 drawn on I.C.I.C.I. Bank, Palani Branch



wherein the appellant is having his Savings Bank Account. Believing the words of the revision petitioner the cheque was presented for collection and the same was dishonoured and returned with an endorsement as 'insufficient funds' on 22.10.2012. Therefore, the respondent has issued a legal notice, dated 15.11.2012 for which the petitioner has sent reply, dated 02.12.2012 was issued with false allegations, but, the petitioner did not repay the amount due under the cheque. Therefore, the respondent/complainant, has preferred a private complaint under Section 138 of the Negotiable Instruments Act, after the statutory period. Both the Courts below have found the petitioner/ accused guilty and aggrieved, the petitioner has preferred the instant revision case.

4. Heard Mr.N.Saravanan, learned Counsel for the respondent/complainant and perused the material documents available on record.

5. The criminal revision case has been filed on the ground that the petitioner/accused has not borrowed any loan at all, as alleged by the complainant. The appellate Court has confirmed the order passed by the learned Judicial Magistrate, Fast Track Court, Palani, without considering the documents and facts involved in the case. The complainant has issued notice twice which is in violation of the Act. Therefore, a false case has been foisted against him and prays for interference.

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

7. Perusal of record shows that the respondent herein / complainant, in support of his case, examined two witnesses as PW1 & PW2 and marked seven documents. The petitioner herein/accused has examined three witnesses as D.W.1 to D.W.3 and marked four documents Ex.D.1 to Ex.D.4 to substantiate his case. The petitioner/accused has stated that he signed in Tamil after 2009. The alleged cheque was issued in the year 2012. He gave four unfilled but signed cheques to the complainant's father in the year 2004 and his father has filed dishonoured cheque case on the basis of one case and was compromised. This complainant used one of the cheques and filed this case.

8. The petitioner had filed the Criminal Revision case on two grounds. The first ground is that his signature in the cheque is different and the second ground is he gave unfilled signed cheque to the father of the complainant. Therefore, his statement is unbelievable and contradictory. He didn't take any steps to send the cheque to handwriting expert. It is pertinent to note that the petitioner has admitted his signature in Ex.P.1, Cheque. The presumption under Section 118 and 139 of the Negotiable Instruments Act is against the accused. When the father of the complainant refused to return the cheque, the accused might have taken steps to get the cheque through legal action. Atleast, he



might have issued legal notice. On the other hand, the complainant should satisfy the ingredients of the Section 138 of the Negotiable Instruments Act.

9. Section 138 of the Negotiable Instruments Act, is extracted hereunder:

" 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".

10. 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, Fast Track Court, Palani in STC No. 1 of 2013 dated 18.04.2013, as confirmed by the learned the learned Additional District Judge, Dindigul in C.A. No.36 of 2013, dated



11. 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.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Additional District Judge,
Dindigul.
- 2.The Judicial Magistrate,
Fast Track Court, Palani.
- 3.The Chief Judicial Magistrate,
Dindigul.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section, (Records) (2C)
Madurai Bench of Madras High Court,
Madurai District.

Crl.RC (MD) No.289 of 2016
03.02.2021

TP (CO)

KB(24.02.2021) 4P 7C