



Bail Slip

Revision Petitioner/Accused, namely Srinivasan S/o.Subbiah was directed to be released on bail in and by the order of this Court dated 22.03.2017 made in Crl.M.P(MD)No.2556/2017 in Crl.R.C(MD) No.276/2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2021

Pronounced on : 15.03.2021

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

CRL.RC(MD).No. 276 of 2017

Srinivasan : Petitioner / Appellant / Accused  
Vs.

Chandrasekaran : Respondent /Respondent/ Complainant

**PRAYER:-** Criminal Revision Case filed under Section 397 and 401 Cr.P.C., against the order passed in C.A.No.13 of 2015 on the file of the District and Sessions Court, Sivagangai, dated 16.02.2017 confirming the conviction and sentence passed in S.T.C.No.88 of 2014 on the file of the Fast Track Court (Judicial Magistrate Level), Karaikudi, dated 03.02.2015.

For petitioner : Mr. C. Jeyaprakash

For respondent : Mr. N. Balakrishnan

**ORDER**

This Criminal Revision is directed against the concurrent Judgment of the conviction passed in C.A.No.13 of 2015, dated 16.02.2017 on the file of the District and Sessions Court, Sivagangai, confirming the Judgment passed in S.T.C.No.88 of 2014, dated 03.02.2015 on the file of the Fast Track Court (Judicial Magistrate Level), Karaikudi,

2. The revision petitioner is the accused. The respondent / complainant has lodged a complaint against the petitioner / appellant / accused under Sections 138 and 142 of the Negotiable Instruments Act.



3. For the sake of convenience and brevity, the parties will be referred as per their status / ranking in the trial Court:

4. The case of the complainant is that the accused is his close friend, that on 20.11.2013 the accused borrowed a sum of Rs.2,00,000/- from the complainant and executed a promissory note, that in order to discharge the said loan has issued two cheques for Rs.1,00,000/- each dated 03.03.2014 drawn on Indian Overseas Bank, Karaikudi College Road Branch and the second one dated 10.04.2014 drawn on ICICI Bank, College Road - Branch, that the complainant has sent the Indian Overseas Bank Cheque for collection on 07.05.2014 through his bankers South Indian Bank, Karaikudi Branch and the same was returned as the Bank account was closed on 13.03.2011, that the complainant has presented the second cheque on 03.05.2014 through his Banker Indian Overseas Bank, Karaikudi Branch and the same was returned dishonoured for want of funds in the Bank account of the accused, that the complainant has then sent a legal notice dated 16.05.2014 demanding payment of the amount covered by the cheques, that the accused has received the said notice on 20.05.2014 and sent a reply dated 05.06.2014 containing the false averments and that since the accused has not paid the amount claimed in the statutory notice, the complainant was constrained to lodge a complaint under Section 138 of Negotiable Instruments Act.

5. The learned Judicial Magistrate, after receiving the complaint, has recorded the sworn statement of the complainant and on perusing the records, after satisfying that there existed a prima facie case, has taken the case on file in STC.No.88 of 2014 for the offence under Section 138 of Negotiable Instruments Act and ordered issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to him under Section 207 Cr.P.C., on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty. During trial, the complainant has examined himself as PW.1 and examined 3 other witnesses as PW.2 to PW.4 respectively and exhibited 9 documents as Exs.P1 to P9. After closure of the complainant side evidence, when the accused was questioned under Section 313 (1) (b) Cr.P.C., he denied the complainant's side evidence as false and he further stated that a false case was foisted against him and that he is having defence evidence. The accused examined himself as DW.1 and also examined his wife Vadamar Mangai as DW.2 and exhibited three documents as Exs. D1 to D3.

6. The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the Judgment on 03.02.2015 convicting the accused for the offence



under Section 138 of Negotiable Instruments Act and sentenced to undergo six months Simple Imprisonment and to pay a compensation of Rs.2,00,000/- within a period of two months from the date of Judgment under Section 357(3) Cr.P.C. and in default to undergo two months Simple Imprisonment. Aggrieved by the said Judgment of conviction, the accused has preferred an appeal in Criminal Appeal No. 13 of 2015 on the file of the District and Sessions Court, Sivagangai and that the Appellate Court, on perusing the records and on hearing the arguments of both sides, has passed the impugned judgment on 16.02.2017 dismissing the appeal and thereby, confirming the Judgment of the conviction passed in STC.No.88 of 2014, dated 03.02.2015 by the learned Judicial Magistrate, Karaikudi. Not satisfied with the Judgment of the Appellate Court, the accused has come forward with the present revision.

7. Whether the concurrent Judgments of conviction passed in the C.A.No.13 of 2015, dated 16.02.2017 on the file of the District and Sessions Court, Sivagangai and in S.T.C.No.88 of 2014, dated 03.02.2015 passed by the Court of Judicial Magistrate, Karaikudi are liable to be set aside? is the point for consideration.

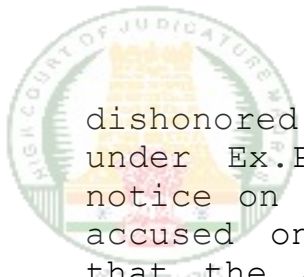
8. Before entering into the factual aspects of the case, it is necessary to refer Section 118(a) and Section 139 of Negotiable Instruments Act which deal with statutory presumption:

"118. ...

(a) of consideration ; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

139.Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

9. It is the specific case of the complainant that the accused borrowed a sum of Rs.2,00,000/- on 20.11.2013 and executed a promissory note under Ex.P1, that the accused in order to discharge the said loan has issued two cheques for Rs.1,00,000/- each, one cheque dated 03.03.2014, drawn on Indian Overseas Bank under Ex.P2 and another cheque, dated 10.04.2014 drawn on ICICI Bank under Ex.P3, that when Ex.P2 cheque was sent for collection, the same was returned as the account was closed on 13.03.2011 through Bank memo dated 07.03.2014 under Ex.P4, that when the second cheque sent for collection, the same was returned



dishonored for insufficient funds vide Bank memo dated 03.05.2014 under Ex.P5, that the complainant has then sent a statutory notice on 16.05.2014 under Ex.P6 and the same was received by the accused on 21.05.2014 vide postal acknowledgment, under Ex.P7, that the accused has then sent a reply dated 05.06.2014 under Ex.P8 and that since the accused has not made any payment, the complainant was forced to prefer the complaint against the accused for the offence under Sections 138 and 142 of the Negotiable Instruments Act.

10. According to the complainant, his friend Sivaraman PW.2 was the scribe cum attesting witness for Ex.P1 Promissory note. PW.2 in his evidence before the Court would depose about the borrowal of Rs.2,00,000/- by the accused from the complainant and the execution of the Ex.P1 - Promissory note therefor. As rightly pointed out by the learned counsel for the complainant, though PW.2 was subjected to cross examination, nothing was elicited and his evidence regarding the loan transaction was not at all shaken. It is evident from the records that the complainant has given evidence as PW.1 reiterating the complaint contentions and he has deposed about the liability of the accused, issuance of cheques therefor, dishonour of the cheques on the grounds of closure of account and for want of sufficient funds, issuance of the statutory notice and failure of the accused to pay the amount within the stipulated time. No doubt, the accused, during the trial, has denied the very borrowal and the issuance of cheques and also the signatures found therein. But it is pertinent to note that in Ex.P8 - reply notice issued in response to the complainant's Ex.P6 - statutory notice, has specifically stated that when he came to Madurai on 24.08.2005 for his business purpose, he lost Exs.P1 and P2 cheques along with some other cheques, which were not filled but signed.

11. Considering the above, it is very much clear that the accused had admitted that the signatures found in Ex.P1 and P2 were that of his signatures. On considering the evidence available, as rightly pointed out by the complainant's side, the trial Court as well as Appellate Court have rightly drawn the presumption under Section 139 of Negotiable Instruments Act in favour of the complainant. As rightly argued by the learned counsel appearing for the complainant, the statutory presumption under Section 118 of Negotiable Instruments Act is also to be drawn in favour of the complainant.

12. No doubt, as rightly contended by the defence, the presumption under Sections 118 and 139 of Negotiable Instruments Act are always rebuttable in nature. It is settled law that the statutory presumption is always rebuttable and once acceptable rebuttable come from the defence, then the burden shifts to the



complainant to prove by definite evidence that the rebuttal is liable to be brushed aside. In **Rangappa Vs. Sri Mohan** reported in **2010(11) SCC 414**, the Hon'ble Supreme Court has specifically held that in the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden and that it is settled position that when an accused has to rebut the presumption under Section 139 of Negotiable Instruments Act, the standard of proof for doing so is that of "preponderance of probabilities". It is also settled law that the accused, in order to rebut the presumption drawn in favour of the complainant under Sections 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can prove his probable defence through the evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

13. In the case on hand, it is pertinent to mention that the defence of the accused is of total denial. The accused has disputed the very borrowal of loan, execution of promissory note and issuance of the cheques therefor. According to the accused, he had lost the Exs.P2 and P3 cheques along with some other cheques and the complainant had managed to get the said two cheques, filled up the same and utilized for filing of the present complaint. As already pointed out, in the reply notice under Ex.P8 the accused has specifically admitted the signatures found in Exs.P2 and P3 cheques. But sensing that the presumption may be drawn in favour of the complainant, he has taken a "U" turn and started denying the signatures found in Exs.P2 and P3 cheques. When the complainant PW.1 was in witness box, a specific question was put to him as to whether he was ready to send the cheques to handwriting experts and PW.1 would say that he has no objection. PW.1 in his cross examination would reiterate that the accused had issued the filled up cheques. Admittedly, the accused has not chosen to take any steps for sending the disputed cheques to the handwriting experts to show that the signatures found therein were not that of his signatures.

14. It is pertinent to mention that the accused as well as his wife DW.2 in their evidence would admit that the accused has already been convicted in another dishonoured cheque case instituted by one Valli. DW.1 would say in his evidence that he has not taken the defence of losing of cheques in the said case. Though the accused in his reply notice has specifically alleged that he preferred a complaint before Madurai B10 Police Station for the missing of the cheques and that the police has issued a certificate stating that the cheques would not be traced out, admittedly, the accused has not chosen to produce the certificate issued by the police nor the receipt issued for lodging of the complaint nor the copy of the complaint. In cross



examination, he would only say that he does not know the whereabouts of the said documents, as already 10 years got lapsed. But, he has not taken any steps to get the copies from the police station nor any steps to send for the same before the trial Court.

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15. It is further case of the accused that after missing of the cheques and preferring of the complaint before the police, he sent a letter to the Branch Manager, Indian Overseas Bank, Subramaniyapuram Branch, Karaikudi, dated 25.08.2005 under Ex.D2 intimating about the missing of cheques and requesting them to stop the payment in case, if cheques were received for collection. In Ex.D2 letter, he has stated that when he came to Madurai, he had lost his purse, which contains some cheques and Rs.486/- and listed out the numbers of the cheques. It is also pertinent to mention that the accused has mentioned 5 cheque numbers belonging to the Indian Overseas Bank and four cheques belonging to the Bank of India, which was later merged with the ICICI Bank. The accused in his evidence before the Court would admit that he has not sent any such letter informing the missing of cheques and requesting them to stop the payment, to the ICICI Bank. But he has not offered any explanation for not sending the letter to the ICICI Bank, when he had sent Ex.D2 letter to the other Bank viz., Indian Overseas Bank.

16. The next contention of the accused is that his wife DW.2 was having Rs.5,00,000/- in the form of Fixed Deposit at the time of alleged transactions with the complainant and that there was no need or necessity to borrow Rs.2,00,000/- from the complainant when his wife was having Rs.5,00,000/- in her possession. DW.2 in her cross examination would say that his husband was running a TV shop at Koppudaiamman Street, Karaikudi previously, that subsequently he closed that shop due to loss, that thereafter he became a Cable TV operator and subsequently left that business also and that her husband was without any job or business for 2 or 3 years. The accused has produced the Term Deposit Account Statement and exhibited the same as Ex.D3 and whereunder it is evident that the amount was deposited on 25.03.2013 and the same was withdrawn on 25.01.2014. Though the complainant has specifically disputed the above bank statement, as rightly observed by the trial Court, the accused has not chosen to produce the Fixed Deposit Receipt nor chosen to summon the Bank officials. Whatever it is, simply because DW.2 wife was having Rs.5,00,000/- in Fixed Deposit Account, it cannot be said that there was absolutely no chance or need for the accused to get a loan from the complainant. During the cross examination, the complainant would admit that he borrowed a sum of Rs.2,00,000/- from his friend, one Ganesan for his own purposes and that since the accused has requested for the loan, he had advanced the said



amount to the accused. Regarding non-examination of the said Ganesan, the trial Court has rightly observed that since the complainant had admitted that he borrowed the said amount for his own purposes and that amount was only given to the accused, the non-examination would not affect the complainant's case in any way.

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17. The Appellate Court, in the Judgment has observed that no endorsement was made in the promissory note Ex.P1, that there is no occasion to pay further amount without documentary proof if there had been a refusal by the complainant to return the discharged cheques or to give receipt for such payment and that the above material circumstance proves that the payment alleged by the complainant cannot be true.

18. As already pointed out, the defence of the accused is of total denial and he has nowhere whispered that he had paid the amount and moreover his defence is that he never borrowed any amount from the complainant nor issued any cheques in his favour. Probably, the learned Appellate Judge has mixed up the facts of the some other case with the present case. In Para 13 also, the learned Judge has commented that RW.1 has not explained as to how he came into possession of the cheque. I am also at loss to understand the above comment made by the learned Appellate Judge, as the same does not convey any meaning. Whatever it is, considering the evidence available, this Court decides that the findings of the Trial Court as well as Appellate Court that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act cannot be found fault with and this Court is in entire agreement with the concurrent judgments of the conviction passed by the Courts below. Coming to the punishment, as already pointed out, the learned Magistrate has convicted the accused and sentenced him to undergo six months Simple Imprisonment and to pay the compensation of Rs.2,00,000/- and in default to undergo two months Simple Imprisonment and the learned Appellate Judge has also confirmed the sentence imposed by the trial Court.

19. Considering the nature of offence and also quantum of the cheque amount, the sentence imposed by the trial Court is very much reasonable and cannot said to be excessive. Hence, there is no reason to interfere with the concurrent Judgments passed by the Courts below and consequently, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

20. In the result, the Criminal Revision Case is dismissed. Trial Court is directed to take necessary steps to



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CRL.RC(MD).No. 276 of 2017

secure the petitioner / accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

trp

**To**

1. The District and Sessions Judge, Sivagangai,
2. The Fast Track Court (Judicial Magistrate Level),  
Karaikudi.
3. Do Through:  
The Chief Judicial Magistrate,  
Sivagangai.

Copy to

The Section Officer, Criminal Section (Records)-2 copies  
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.C.JEYAPRAKASH, Advocate ( SR-11042[F] dated 15/03/2021  
)

**Order made in**

CRL.RC (MD) .No. 276 of 2017

**15.03.2021**

KM (24.03.2021) 8P 7C