



Bail Slip

Jeyaseelan, S/o Gopalan, Aged about 47 years, Sole Accused was directed to be released on bail vide order of this Court dated 28/04/2017 made in Crl.MP(MD)No.3895 of 2017 and Crl.Rc(MD)No.393 of 2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.06.2021

PRONOUNCED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.R.C.(MD) No.393 of 2017

Jeyaseelan : Petitioner/ Appellant/ Accused

Vs.

Chandran : Respondent/Respondent/ Complainant

PRAYER: Criminal Revision Petition filed under Section 397 Cr.P.C. r/w. Section 401 of Criminal Procedure Code, to call for the records relating to the judgment passed by the learned Judge, Fast Track Mahila Court-Sessions Court, Nagercoil in Crl.A.No.67 of 2011, dated 21.01.2017 by modifying the judgment passed by the learned Judicial Magistrate No.II, Nagercoil in S.T.C.No.395 of 2005, dated 22.06.2011 and to set aside the same and consequently, acquit the petitioner from the charges under Sections 138 of Negotiable Instruments Act.

For Petitioner : Mr.A.Balakrishnan

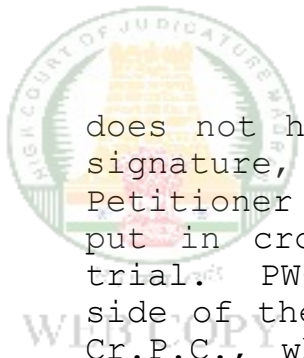
For Respondent : No Appearance

ORDER

This Criminal Revision Case had been filed by the petitioner/accused as against the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil in Crl.A.No.67 of 2011, dated 21.01.2017 in modifying the judgment passed by the learned Judicial Magistrate No.II, Nagercoil in S.T.C.No.395 of 2005, dated 22.06.2011.

2.Heard Mr.A.Balakrishnan, learned Counsel for the petitioner. In spite of notice to the respondent/complainant, no representation for the respondent/complainant. Therefore, this case was taken up for arguments.

3.The case of the Revision Petitioner is that the complainant

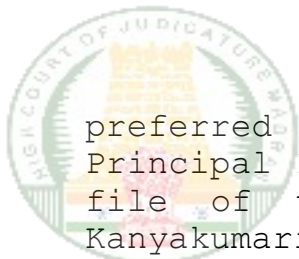


does not have the resources to advance huge amount. Further, the signature, that is alleged to have been affixed by the Revision Petitioner herein, was denied at the earliest stage. The same was put in cross examination to the complainant, as PW-1 during the trial. PW-1 denied the same. After completion of evidence on the side of the complainant, the accused was examined under Section 313 Cr.P.C., where also the accused denied the incriminating evidence against him. After 313 Cr.P.C., proceedings, the accused himself had let in evidence as Ex-D1 to Ex-D4. Ex-D1 is the letter dated 25.04.2004. Ex-D2 is the account note book maintained by the accused. Ex-D3 is sworn statement given by the complainant in S.T.C.No.395 of 2005, on the file of the learned Judicial Magistrate No.II, Nagercoil, as an indigent person before the learned District Judge, Nagercoil in P.O.P.No.221 of 2006, seeking exemption from paying Court fee, as he is pauper. Ex-D4 is the statutory notice, dated 02.11.2006.

4.The contention of the accused before the learned Trial Judge was that the complainant does not have resources to advance a huge loan amount of Rs.10,40,000/- and he had denied the signature on the cheque. As per Section 118 of Negotiable Instruments Act, the presumptions are in favour of the complainant, as the cheque was drawn in favour of the complainant. Therefore, the accused had to discharge his burden through rebuttal evidence.

5.Here, the accused had let in evidence as DW-1 and had raised the presumption in his favour that the complainant had no resources to advance a loan of Rs.10,40,000/- in favour of the accused herein. He had not furnished the proof of income for the past several years, as income tax assessment. Under such circumstances, the accused had discharged the burden cast upon him regarding the claim made by the complainant. The evidence of the accused need not be proved beyond reasonable doubt. It is enough, if he has let in evidence, thereby, raising the probability that the circumstances in the case is more in favour of the accused. Accordingly, he had discharged the burden cast upon him under Sections 118 and 139 of Negotiable Instruments Act, by letting in evidence by marking vital documents that the complainant had filed Pauper Original Petition before the learned District Judge, Nagercoil, seeking exemption from paying Court fees stating that he is an indigent person. That will be sufficient to acquit the accused and to dismiss the complaint. Instead, the learned Trial Judge had ignored the plea of the accused and mechanically allowed the complaint. The learned trial Judge convicted the accused for an offence under Section 138 of Negotiable Instruments Act and sentenced the accused to undergo one year rigorous imprisonment and compensation of Rs.10,40,000/-, in default, to undergo three months simple imprisonment.

6.Aggrieved by the judgment of conviction imposed by the learned Judicial Magistrate No.II, Nagercoil, the accused had



preferred an appeal in Crl.A.No.67 of 2011 before the learned Principal District Judge, Kanyakumari, which was transferred to the file of the learned Special Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil. The learned Appellate Judge had confirmed the conviction against the accused by the learned Trial Judge and modified the sentence and the sentence of imprisonment was reduced from one year to one month rigorous imprisonment along with fine of Rs.40,000/-. Aggrieved by the same, this Revision Petition had been filed on the ground that the finding given by the learned Judicial Magistrate, Nagercoil, is perverse, as the valuable right of the Revision Petitioner had been affected.

7.Point for consideration:

Whether the judgment passed by the learned Judicial Magistrate No.II, Nagercoil in S.T.C.No.395 of 2005, dated 22.06.2011, is to be set aside as perverse?

8.It is the contention of the Revision Petitioner that the complainant does not have resources to advance a huge amount of Rs.10,40,000/-. The very same complainant had filed Pauper Original Petition before the District Court, seeking exemption from paying Court fee, as he is pauper, which was marked as Ex-D3.

9.The arguments of the learned counsel for the revision petitioner cannot be considered. In the light of the principle governing revision case, when there are concurrent findings of the fact based on proper appreciation of evidence, the Revision Court shall not disturb the findings of the trial Court. The Revision Court exercises its discretion on a narrow compass. It has no discretion to peruse the entire evidence and dis-lodge the finding of the fact which was re-appreciated by the Appellate Court already.

10. Only if the finding arrived by the learned trial Judge is perverse or on technicalities of law, the Revision Court shall interfere. Here, the arguments of the learned counsel for the revision petitioner were based on two points. One is the defacto complainant does not have resources to advance such a huge amount. That had been discussed in detail by the learned trial Judge in his judgment stating that Rs.4,00,000/- was advanced by the complainant through the issuance of cheques borne out of the Bank account of the complainant which was withdrawn by the accused. When Rs.4,00,000/- was pending repayment by the accused, the accused sought further Rs.6,40,000/- to meet out his urgent expenses. That was also issued as a cheque borne out of the Bank of the complainant. Under those circumstances, the arguments of the learned counsel for the revision petitioner that the respondent/complainant does not have resources was already rejected by the learned trial Judge. This was re-agitated in the appeal, where also learned appellate Judge rejected the same. After having drained his resources when the complainant



filed suit for recovery of money against the accused, the complainant had filed a petition stating that he does not have the resources to pay Court fees and seeking an exemption to pay Court fee is found justified considering the plight of the complainant that his resources had been drained by extending a huge amount as loan to the accused/revision petitioner. This has also been discussed by the learned trial Judge in his Judgment and rejected the contention of the learned counsel for the accused.

11. The second point is that the cheque was not signed by the accused. The same was agitated before the learned trial Judge and the Forensic Expert opinion was also obtained. The Forensic Expert had given his opinion stating that the signature found on the cheque belongs to the accused whereas the signature found on Ex.P.4 - Receipt alleged to have been executed by the accused was not that of the accused. Therefore, the learned trial Judge had observed that the receipt alleged to have been signed by the accused does not belong to the accused whereas the cheques were signed by the accused. Not only that, if the signature of the accused in the cheques were different, the Bank where the accused maintained the account would have returned the cheque along with remarks "signature different". Here, the memo of the bank had only stated, "insufficient funds".

12. Therefore, the learned trial Judge had given a clear finding of fact that the signature disputed by the accused had been rejected. Also the learned trial Judge relied on the reported rulings of this Court that in the cases involving documents with disputed signature, when those documents are sent for Forensic Examination and report of the same is obtained, the Forensic Expert opinion alone will not be sufficient and what is available in the evidence before the Court also ought to have been considered. Here the accused himself had admitted the signature in his cross-examination. Also the complainant had produced recorded evidence in the previous civil cases between the complainant and the accused, wherein the accused had admitted the signature. Under those circumstances, the opinion of the Forensic Expert was also discussed in the findings of the learned trial Judge. The learned trial Judge had arrived at a clear finding on logical conclusion that the accused herein had made a defence which was rejected by the learned trial Judge based on evidence.

13. Under those circumstances, the rejection of the claim of the accused is justified. On perusal of the judgment of the learned trial Judge and the finding of the learned Appellate Judge, this Court is of the opinion that those Courts have properly appreciated the evidence and arrived at a clear finding in favour of the complainant. Under those circumstances, the arguments of the learned counsel for the Revision Petitioner that the finding of the learned trial Judge and the assessment of evidence by the learned



trial Judge are perverse, cannot at all be accepted. Hence rejected. The learned counsel for the petitioner relied upon the rulings of the Hon'ble Supreme Court reported in **(2015) 1 SCC 99 [K. Subramani -vs- K. Damodara Naidu]** will not help the case on hand. In the case herein, as the learned trial Judge had clearly discussed the evidence that only through cheques, the complainant had advanced the amount to the accused. Another case relied on by the learned Counsel for the petitioner reported in **(2009) 2 SCC 513 [Kumar Exports -vs- Sharma Carpets]** also will not be helpful. The fact that the accused had not stopped the payment for the alleged missing of cheques, the fact that the accused had admitted the signature and the fact that the accused withdrawn the amount from the Bank of the complainant through cheques issued by the complainant. As observed by the learned trial Judge, it had proved the case of the complainant. Under those circumstances, the reliance placed on for the presumption available to the accused in the above ruling will not help the case of the revision petitioner/accused herein. Therefore, the same is rejected.

14. The point for consideration is answered against the revision petitioner/accused and in favour of the respondent/complainant.

In the result, this Criminal Revision Petition is dismissed and the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil in Crl.A.No.67 of 2011, dated 21.01.2017 in modifying the judgment passed by the learned Judicial Magistrate No.II, Nagercoil in S.T.C.No.395 of 2005, dated 22.06.2011 is confirmed. **The learned Judicial Magistrate No.II, Nagercoil is directed to issue warrant and secure the appellant/accused to undergo remaining period of imprisonment and to collect the amount of compensation of Rs.10,40,000/- (Rupees Ten Lakhs and Forty Thousand only) from the accused under Section 357 of Cr.P.C.**

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

cmr/dh

To

1. The Sessions Judge, Fast Track Mahila Court, Nagercoil.

2. The Judicial Magistrate No.II, Nagercoil.



3.-DO- Through the Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

Copy to:-

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.BALAKRISHNAN, Advocate (SR-28262[F] dated
06/09/2021)

CRL.R.C. (MD) No.393 of 2017

03.09.2021

RD(28.09.2021) 6P 7C