Bail Slip

The Petitioner R.Sridhar, S/o.P.S.Rajasekaran, was released on bail order at this Court. Dated 17/07/2017 and made in Crl.MP(MD) No.6243/2017 in Crl.RC(MD)No.553/2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 01.09.2021
Delivered on : 07.09.2021
CORAM:
THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**
Crl.R.C.(MD)No.553 of 2017

R.Sridar ... Petitioner/Petitioner/Accused

Vs.

Murugavel ... Respondent/Respondent

PRAYER: This Criminal Revision Petition is filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence imposed by the learned Principal District and Sessions Judge, Theni, in Crl.A.No.4 of 2015, dated 16.12.2016, in modifying the conviction and sentence imposed by the learned District Munsif-cum-Judicial Magistrate, Bodinayakanur, in S.T.C.No.97 of 2008, dated 19.01.2015.

For Petitioner : Mr.C.B.Ramalingam
For Respondent : Mr.N.Vallinayagam

ORDER

This Criminal Revision has been filed seeking to set aside the conviction and sentence dated 16.12.2016, passed in Crl.A.No.4 of 2015, on the file of the Principal District and Sessions Court, Theni, confirming the conviction and sentence dated 19.01.2015, passed in S.T.C.No.97 of 2008, on the file of the District Munsif-cum-Judicial Magistrate Court, Bodinayakanur.

2.The petitioner is the accused in S.T.C.No.97 of 2008, on the file of the District Munsif-cum-Judicial Magistrate Court, Bodinayakanur. The respondent is the complainant in the said case. The respondent filed the said case alleging that the petitioner has committed the offence punishable under Section 138 of the Negotiable Instruments Act. The District Munsif-cum-Judicial Magistrate Court, Bodinayakanur, by judgment dated 19.01.2015, convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for one month.

3.Challenging the same, the petitioner has filed an appeal in C.A.No.4 of 2014 before the Principal District and Sessions Court, Theni. By judgment dated 16.12.2016, the lower appellate Court has dismissed the appeal, thereby confirming the conviction and sentence imposed by the trial Court. As against the same, the petitioner is before this Court with this Revision.

4.The case of the respondent/complainant is that the petitioner/accused borrowed a sum of Rs.2,00,000/- as hand loan from the respondent to discharge his family debts and development of business on 02.09.2007 and promised to repay the amount after two months, for which, the petitioner issued the State Bank of India cheque payable at Bodinayakanur Branch bearing No.0662260, for an amount of Rs.2,00,000/-. The respondent presented the said cheque for collection on 02.11.2007 through Karur Vysa Bank, Bodinayakanur Branch as per the instruction and request of the petitioner and the same was returned unpaid as ''Account closed'' on 03.11.2007. When the respondent again approached and informed about the dishonour of cheque and asked for the payment, the petitioner never cared about it and has not answered properly. Hence, the respondent issued a legal notice on 16.11.2007 through his counsel to the petitioner to pay the amount to the respondent within 15 days from the date of receipt of the said notice. The legal notice was received on 17.11.2007 and after receipt of the said notice, the petitioner issued reply notice with false allegations. Hence, the complaint.

5.In order to prove his case, on the side of the respondent, the respondent was examined as P.W.1 and as many as five documents were exhibited. Ex.P.1 is the copy of the cheque, dated 01.11.2007. Ex.P.2 is the Memo issued by the State Bank of India, Bodinayakanur, dated 03.11.2007. Ex.P.3 is the copy of the legal notice, dated 16.11.2007, issued to the petitioner. Ex.P.4 is the acknowledgment in respect of receipt of Ex.P.3. Ex.P.5 is the reply notice sent by the petitioner's counsel to the respondent's counsel.

6.When the above incriminating materials were put to the petitioner/accused, he denied the same as false. On behalf of the petitioner, he himself was examined as D.W.1, wherein he has stated that for the loan availed by himself and his wife, number of persons have given tortures and hence, on 08.09.2003, he lodged a complaint before the Superintendent of Police, Theni District, under Ex.D.1. Only during such time, some of the persons received blank cheque from him, presented the same for encashment. In this regard, he issued an instruction to the Bank through Advocate notice, dated 10.09.2003, which is marked as Ex.D.2. Further, the acknowledgment card pertains to the said notice was marked as Ex.D.3. D.W.1 has further stated that the present case has been filed against him by using the blank cheque, which was obtained by one Radhakrishnan.

7.The learned counsel appearing for the petitioner would submit that from Exs.D.1 to D.3, it has been clearly established by the petitioner that the cheque in question was not at all issued to the respondent and as a matter of fact, it was obtained by one Radhakrishnan by coercion. He would further submit that it was not duly executed, which was given only as a blank cheque. The learned counsel would further submit that the notice issued to the bank was much prior to the issuance of cheque in question, dated 01.11.2007, which was presented for collection on 02.11.2007 itself. According to the learned counsel, the cheque pertains to this revision would not have been issued to the complainant at all as projected by him.

8.Per contra, the learned counsel appearing for the respondent would stoutly oppose this revision. According to him, insofar as Ex.D.2 is concerned, it is only a copy of the letter sent to the Bank for not honouring the cheque leaves bearing Sl.Nos.660281 to 660300 and 662241 to 662260. In the reply notice sent by the revision petitioner to the respondent, there was no denial that the signature found in the cheque is not his signature. The entire averments narrated in Ex.P.5 reply notice would go to show that the alleged cheque has been issued to one Radhakrishnan and not to the respondent.

9.I have heard the learned counsel appearing on either side and also perused the materials available on record carefully.

10.In order to hold the accused guilty under Section 138 of the Negotiable Instruments Act, it is mandatory that the complainant should prove that the cheque in question was issued as against the legally enforceable debt or liability. Here, in this case, it was stated that the cheque in question was issued to one Radhakrishnan. However, in respect of the alleged signature of the revision petitioner found in the cheque, there was no denial on his side. Though it was stated that the particular cheque was obtained by one Radhakrishnan, in order to substantiate the same, no substantial evidence has been let in before the Courts below. Further, in the complaint lodged before the Superintendent of Police, Theni District, the respondent/complainant was not arrayed as a party. Further, in his cross-examination, D.W.1 had admitted that in respect of presentation of the cheque, there was no acknowledgement available with him. In the complaint given before the Superintendent of Police, there is no averment to the effect that the said Radhakrishnan has obtained blank cheque in question by coercion and threat. More than that, in respect of the relationship between Radhakrishnan and the respondent, no evidence has been adduced on the side of the petitioner to show that the said Radhakrishnan has filed the present complaint in the name of the respondent. Therefore, it is quite clear that the evidence and exhibits produced on the side of the petitioner have not proved the fact that the cheque pertains to this revision has been issued only to the said Radhakrishnan. In the said circumstances, it is an essential ingredient of the offence under Section 138 of the Negotiable Instruments Act ''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 and 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 closed 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 be extended 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 was 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 drawee of the cheques, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

c) The drawee 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.

11.In the instant case, as rightly pointed out by the learned counsel appearing for the respondent there was no denial on the side of the petitioner that the signature found in the cheque does not belong to him. Therefore, the respondent is entitled to invoke the presumption of Section 139 of the Negotiable Instruments Act that the cheque has been issued for discharging the legally subsisting liability, which is a rebuttable presumption. As already observed, the presumption has not been rebutted by the petitioner/accused. He has not probabilised his defence by preponderance of probabilities. Hence, in view of the same, this Court holds that the cheque has been issued for discharging the legally enforceable debt. In respect of the presentation of the cheque, P.W.1 had given evidence as the cheque was presented on 02.11.2007 and thereafter, on 03.11.2007 the same was returned with an endorsement as ''Account closed''. Hence, statutory notice has been issued to the respondent on 16.11.2007 and the same was returned as could be evidenced from the return cover and postal receipt. The said circumstances reveal the fact that by following the ingredients of Section 138 of the Negotiable Instruments Act, the case has been presented before the trial Court for initiating action against the petitioner under Section 138 of the Negotiable Instruments Act.

12.It is possible to infer that Radhakrishnan would have engineered the complainant to file the present case. In order to draw this inference, it is for the petitioner/accused to prove the date on which the said Radhakrishnan forcibly obtained the present cheque. The evidence given by the revision petitioner before the trial Court makes it clear that he does not know the date on which the cheque has been issued to the said Radhakrishnan. Therefore, in the absence of the details in respect of the date on which the said cheque was issued to the said Radhakrishnan, this Court cannot hold that the said Radhakrishnan has filed the complaint through the complainant. More than that, mere mentioning the story that one Radhakrishnan is the owner of Radha Lodge, forcibly obtained the cheque and filed the case without any substantial evidence is not having much significance. At any rate, in this case, the defence taken by the accused on the face of the transaction between Radhakrishnan and the respondent may not be true.

13.In the result, this Criminal Revision is dismissed, confirming the conviction and sentence imposed by the Courts below on the revision petitioner.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Principal District and Sessions Judge,
Theni.

2.The District Munsif-cum-Judicial Magistrate,
Bodinayakanur.

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

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-28524[F] dated 08/09/2021)

Pre-delivery order in
Crl.R.C.(MD)No.553 of 2017
07.09.2021

_RS (13.09.2021) 5P 6C