



BAIL SLIP

Palanisamy, male aged about 49(2017) S/o.Sundararaj, was released on Bail as per order dated 31/07/2017, in CRL MP(MD) No.6848 of 2017 in CRL RC(MD) No.608 of 2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 02.07.2021

ORDER PRONOUNCED : 03.09.2021

CORAM

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

Crl.R.C.(MD) No.608 of 2017

Palanisamy

... Petitioner

vs.

1.R.Suresh Babu

2.The Public Prosecutor,
Dindigul,
Dindigul District.

... Respondents

PRAYER:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment in C.A.No.36 of 2012 dated 12.07.2016 by the learned Additional Sessions Judge, Dindigul confirmed conviction and sentence under Section 138 of Negotiable Instrument Act and sentenced to 3 months Simple Imprisonment and to pay compensation of the cheque amount of Rs.75,000/- (Seventy Five Thousand Only) within 2 months from the date of pronouncement of judgment under Section 375(3) of Cr.P.C., by the learned Fast Track Court at Magisterial Level, Palani in C.C.No.28 of 2011 dated 25.01.2012 and set aside the same.

For Petitioner : Mr.D.Selvaraj

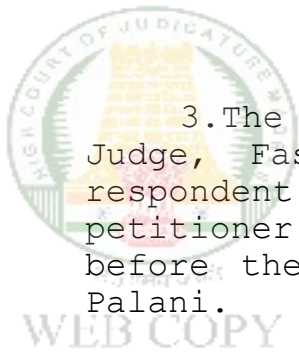
For R1 : Mr.T.Lenin Kumar

For R2 : Mr.T.Senthilkumar
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed as against the judgment dated 12.07.2016 passed in C.A.No.36 of 2012 by the learned Additional Sessions Judge, Dindigul.

2.The brief facts, which are relevant for consideration in this Revision Case, are as follows:-



3.The petitioner herein is the accused before the learned Judge, Fast Track Court at Magisterial Level, Palani. The 1st respondent herein had preferred a complaint as against the petitioner under Section 138 of the Negotiable Instruments Act before the learned Judge, Fast Track Court at Magisterial Level, Palani.

4.As per the complaint, the complainant/1st respondent herein and the accused were friends for the past ten years. The accused/petitioner was running a business in the name of Vigneswara Agencies. On 20.10.2002, the petitioner/accused borrowed a sum of Rs.75,000/- from the complainant/1st respondent for his business expenses and for discharging sundry debts.

5.On 20.01.2003, towards repayment of the loan, the petitioner/accused had issued a cheque for a sum of Rs.75,000/- bearing Cheque No.659297 in favour of the complainant/1st respondent drawn on 'Canara Bank', Keeranur Branch. The complainant presented the cheque for collection on 20.01.2003 through his Bank, the Lakshmi Vilas Bank Limited, Palani Branch. On presentation of the cheque, the same was returned on 29.01.2003 with an endorsement 'Funds Insufficient'. The complainant/1st respondent had informed regarding the return of cheque on the ground of 'In Sufficient Funds' to the petitioner/accused, but the petitioner/accused had not made any arrangement to repay the debt.

6.In view of the same, the complainant/1st respondent had issued a legal notice dated 01.02.2003 to the accused, directing him to pay the said amount within a period of 15 days from the date of receipt of the notice. However, the petitioner/accused had not given any reply. Hence, the complaint was filed under Section 138 of Negotiable Instrument Act, praying the Court to issue summons to the accused, to conduct an enquiry and pass judgment.

7.The complaint was filed by the complainant/1st respondent before the learned Judicial Magistrate, Palani and thereafter, sworn statement was also recorded by the learned Judicial Magistrate, Palani. As per the provisions of Section 200 of Cr.P.C., the private complaint was taken cognizance by the learned Judicial Magistrate, Palani having satisfied that the ingredient of the private complaint under Section 138 of NI Act was attracted. Taking cognizance of the offences under Section 138 of the Act, the learned Judicial Magistrate, Palani numbered the complaint as C.C.No.28 of 2011 and issued summons to the accused. After receipt of the summons by the accused, the accused appeared before the learned Judicial Magistrate, Palani.

8.On appearance of the accused before the learned Judicial Magistrate, Palani, the accused was furnished with copies under Section 207 of Cr.P.C and he was questioned regarding the offence of Negotiable Instrument Act. The accused pleaded not



guilty to the charge and prayed to be tried. Therefore, the learned Judicial Magistrate, Palani had ordered trial.

9.The complainant himself was examined as P.W-1 and one Thiru.Prakasam, the Manager, Canara Bank, Keeranur, Palani was examined as P.W-2. Documents were marked on the side of the complainant as Ex.P1 to Ex.P8. The incriminating evidences available against the accused was put to him and under Section 313 of the Cr.P.C., the accused denied the incriminating evidence. After examination of the accused under Section 313(1) of Cr.P.C., the accused himself had examined as D.W1.

10.D.W-1/the accused in his evidence had stated that the complainant/1st respondent is not a known person to him and how the cheque reached the hands of the complainant is not known. Therefore, he has no liability to pay the cheque amount.

11.The evidence of D.W-1/the accused was not considered by the learned trial Judge on the ground that after receipt of the notice, Ex.P5, dated 01.02.2003, the accused had not issued any reply to the complainant/1st respondent. Therefore, the presumption available under Section 138 of Negotiable Instrument Act was in favour of the complainant/1st respondent.

12.On assessment of the evidence under Sections 118 and 138 of Negotiable Instrument Act and after hearing the arguments advanced by the learned counsels on either side, the learned Judicial Magistrate, Palani, had pronounced the judgment dated 25.01.2012, convicting and sentencing the accused to undergo Simple Imprisonment for 3 months and to pay a compensation of Rs.75,000/- for the offence under Section 138 of Negotiable Instrument Act.

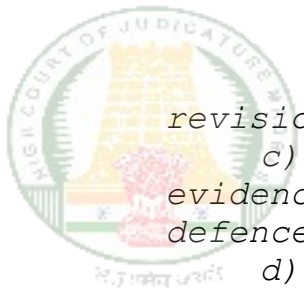
13.Aggrieved by the said judgment, the petitioner herein had preferred an appeal in Crl.A.No.36 of 2012 before the Court of the learned District and Sessions Judge, Dindigul, which was later made over to the Court of the learned Additional Sessions Judge, Dindigul.

14.After hearing the arguments on either side, the learned Additional Sessions Judge, Dindigul, dismissed the appeal and confirmed the judgment of conviction passed by the learned Judicial Magistrate, Palani. Aggrieved by the dismissal of the criminal appeal in Crl.A.No.36 of 2012, the present Criminal Revision Case had been filed.

15.The grounds of revision are as follows:-

"a) The judgments of the Court below are against law, weight of evidence and the probabilities of the case.

b) The Courts below failed to consider various evidences available on record before convicting the



revision petitioner.

c) The Courts below failed to consider available evidence and the documents which clearly establish the defence version.

d) The Courts below ought to have accepted the defence version as it is more probable than the complainant's case.

e) The Courts below ought to have seen the defence version that is while availing the loan of Rs.75,000/-, the complainant who is running a rice mill failed to produce the account book rebut the defence taken by the revision petitioner.

f) The Courts below ought to have seen that except the word of mouth of the complainant nothing has been brought on record to prove the case against the revision petitioner/accused.

g) The revision petitioner/accused reserve his right to raise additional grounds if any at the time of final hearing.

h) The mandatory procedure of Section 248 of Cr.P.C., was not followed by the trial Court.

i) The trial Court did not follow the mandate as stated under Section 139 of NI Act."

16.The point for consideration in this Revision Case is whether this Revision Case filed by the Accused is to be allowed and the Judgment of conviction recorded by the learned Fast Track Court (Magisterial Level), Palani in C.C.No.28 of 2011 and confirmed by the learned Additional District Judge, Dindugal in C.A.No.36 of 2012 is to be set aside?

17.When the case came up for hearing on 28.04.2021, the learned counsel for the petitioner sought time to advance the arguments after summer vacation. Therefore, the case was adjourned to 22.06.2021. When the case came up for hearing again on 22.06.2021, both side counsel sought adjournment to report settlement and therefore, the case was adjourned to 30.06.2021. When the case was came up for hearing on 30.06.2021, instead of reporting settlement, the learned counsel for the petitioner sought time to put forth his arguments. At that time, the learned counsel for the respondent had filed written arguments. Therefore, the learned counsel for the petitioner was directed to submit written arguments. On 02.07.2021, when the case came up for hearing, the learned counsel for the petitioner had furnished written arguments.

18.Mr.D.Selvaraj, learned counsel for the petitioner submitted that the trial Court and the appellate Court failed to consider various evidence available on record before convicting the revision petitioner. Even though the revision petitioner admitted the signature, he denied the execution of the cheque issued in favour of the 1st respondent, whereas, the Court below brushed aside the



essential fact that the offence punishable under Section 138 of the Negotiable Instrument Act will get attracted not only based on the liability to pay the amount but also coupled with the fact that the instrument was issued by the concerned person.

19. Presently, the accused rebutted the presumption contained in Section 139 of the Act. The presumption created in Section 139 of the Act extends only to the issuing of cheque towards discharge of legally enforceable debt or liability and it has to be raised only after the complainant proves that such debt or liability in fact existed as on the date of the cheque in question and the cheque was given by the accused. When the revision petitioner examined himself before the trial Court, the said oral evidence was not taken into consideration. In fact, the accused has a right to maintain silence. Inference of preponderance of probabilities can be drawn by a Court of law not only from the available materials on record but also by the reference to the circumstances, which the accused places reliance, whereas, the contrary statement of the revision petitioner was given much importance rejecting the other materials on record.

20. Mr. T. Senthilkumar, learned Government Advocate (Crl.Side) appearing for the 2nd respondent submitted that in this case nothing was elicited while advancing the arguments on behalf of the revision petitioner. There was no merits warranting interference, as this Court, as Revisional Court, cannot go into the facts of the case or appreciation of the evidence of the case. Only, if there is a perverse finding, this Court can interfere with. In the reported Ruling of the Hon'ble Supreme Court in the case of **State represented by the Drugs Inspector vs Manimaran**, reported in **(2019) 13 SCC 670**, whereby, the Hon'ble Supreme Court had held that the Revision Court cannot go into the concurrent findings.

"D.Criminal Procedure Code, 1973 - S.401 - Revisional jurisdiction - Scope - Revisional Jurisdiction of High Court different from appellate jurisdiction - High Court, in revisional jurisdiction cannot interfere with concurrent findings of facts unless perverse or arrived at ignoring material evidence."

21. This is a case under Section 138 of Negotiable Instrument Act. The presumption is always in favour of the complainant. Therefore, the rebuttal evidence had to be given by the accused/petitioner under Section 138 of Negotiable Instruments Act. Here, the accused himself had let in evidence as D.W-1, denying the friendship and claiming that he does not know the complainant/1st respondent. That was rejected by the learned Judicial Magistrate and the learned Additional Sessions Judge, Dindigul in the appeal. The learned trial Judge and the learned Appellate Judge had observed in their judgments that after receipt of the notice, Ex.P5, the accused had not replied to the same. Therefore, the claim of the complainant stood proved through proper evidence under Ex.P1 to Ex.P8.



22.This Criminal Revision is pending from 2017 onwards. Meanwhile, the petitioner/accused had filed Crl.M.P.(MD) No.6848 of 2017 seeking to suspend the sentence passed in C.A.No.36 of 2017 on the file of the learned Additional Sessions Judge, Dindigul, whereupon, the sentence imposed on the petitioner/Accused alone was suspended on condition that the petitioner/Accused shall deposit a sum of Rs.35,000/- to the credit of C.C.No.28 of 2011 on the file of the learned Judicial Magistrate, Fast Track (Magisterial Level), Palani and the petitioner/Accused had also complied with the conditions. Therefore, it is to be noted that the petitioner/accused had protracted the proceedings from the year 2017 by delaying repayment. When the Court forced the learned counsel for the petitioner to argue the case, he had filed his written submission. On perusal of the written arguments of the revision petitioner, there is no merit in the written submission filed by the learned counsel for the petitioner. Further, the concurrent findings of fact by the Courts below cannot be interfered with in revision by the revision Court.

23.In view of the above, the point for consideration is answered in favour of the respondents/complainant and against the petitioner/accused. The Judgment of conviction recorded by the trial Judge at Palani in C.C.No.28 of 2011 and confirmed in C.A.No.36 of 2012 by the learned Additional District and Sessions Judge, Dindugal, are confirmed. **The learned Judicial Magistrate, Fast Track Court, Magisterial Level, Palani, is directed to issue warrant against the petitioner/Accused and secure him to undergo the remaining period of sentence and also for collection of compensation amount.**

24.A copy of this order is to be sent to the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Palani, learned Additional Sessions Judge, Dindugal and to the learned Chief Judicial Magistrate, Dindugal for follow up.

In the result, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mm/dh

To

1.The Additional Sessions Judge,
Dindigul.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Palani.

3.The Chief Judicial Magistrate,
Dindugal.

4.The Principal District Judge, Dindigul.

5.The Public Prosecutor,
Dindigul, Dindigul District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

Crl.R.C. (MD) No.608 of 2017
03.09.2021

RK (28.09.2021) 7P 9C