



BAIL SLIP

(CRL MP(MD)No.8188 of 2017 in CRL RC (MD)No.712 of 2017)

The Criminal Revision Petitioner/Accused namely K.Mohammed Maraikayar, Son of Kattu Nainar, was directed to be released on bail vide order of this Hon'ble Court dated 07.09.2017 made in CRL MP(MD)No.8188 of 2017 in CRL RC (MD)No.712 of 2017 on the file of this court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.03.2021

Pronounced on : 09.04.2021

CORAM

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

CRL.R.C.(MD).No.712 of 2017

K.Mohammed Maraikayar M/Age-35 : Petitioner
Vs.

M.Janba Sahib : Respondent

PRAYER : Criminal Revision has been filed under Section 397(1) r/w 401 of Cr.P.C, to call for the records pertaining to the judgment in Criminal Appeal No.46 of 2016 on the file of the Principal District and Sessions Court, Camp at Theni, dated 13.04.2017, confirming the judgment in S.T.C.No.1438 of 2014, dated 09.06.2016 on the file of the Judicial Magistrate Court, at Periyakulam and set aside the same and allow this Criminal Revision Petition.

For Petitioner : Mr.B.Sekar,
Legal Aid Counsel.

For Respondent : Mr.R.Aravind Raj

ORDER

The Criminal Revision Case is directed against the concurrent judgments of conviction passed in Criminal Appeal No.46 of 2016, dated 13.04.2017 on the file of the Additional District and Sessions Court, Theni, confirming the judgment made in S.T.C.No.1438 of 2014, dated 09.06.2016, on the file of the Court of the Judicial Magistrate, Periyakulam.

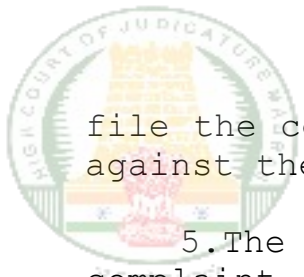
2.The revision petitioner is the accused. The respondent/complainant has filed a complaint against the



petitioner/appellant/accused under Section 138 and 142 of the Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per the status/rank before the trial Court.

4. The case of the complainant is that the accused is known to him as both of them belonging to the same village, that on 06.02.2012, the accused borrowed a sum of Rs.2,30,000/- from the complainant to meet out the medical expenses of his parents and to help his father-in-law to complete the constructions work in the portion owned by his wife, that the accused in an attempt to discharge the said loan issued a cheque on 05.07.2012 drawn on Indian Overseas Bank, Periakulam Branch for Rs.2,30,000/-, that when the said cheque was presented for collection, the same was returned as 'funds insufficient', that when the complainant visited the accused house and demanded the amount, the accused, his mother and his wife had treated the complainant badly and threatened that they would not pay any amount, that the complainant was forced to lodge a complaint before the District Superintendent of Police, Theni on 10.07.2012, that the police, after receiving the complaint has conducted an enquiry and settlement was arrived at, to the effect that the accused has to sell his property to the complainant and two other persons and executed a sale agreement therefor, that the accused has then received a sum of Rs.5,000/- from the complainant and Rs.5,000/- from one Saith Hussain and made an endorsement in the sale agreement, that the complainant's several requests to execute the sale deeds were not complied with, but on the other hand, the accused and some others had threatened the complainant, which forced the complainant to lodge a complaint before the District Collector on 12.08.2013 and after the settlement talks held at Vadakarai Police Station, the accused has issued another cheque bearing registration No.677733 for Rs.2,30,000/-dated 15.04.2014, drawn on Indian Overseas Bank, Periyakulam Branch, that the complainant has then sent the cheque for collection, and the same was again returned dishonored, that the complainant has again preferred a complaint before the Deputy Superintendent of Police, Theni and on coming to know about the complaint, the accused has contacted the complainant and requested him to present the cheque again, that as per the request of the accused, the complainant has again presented the cheque for collection on 15.04.2014, but the cheque was again dishonored for want of sufficient funds in the bank account of the accused, that the complainant has issued a legal notice on 22.05.2014, demanding the payment of the amount covered by the cheque, that though the accused has received the notice on 23.05.2014, he has not chosen to send any reply nor made any payment, that therefore, the complainant was constrained to



file the complaint under Section 138 of Negotiable Instruments Act against the accused.

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 S.T.C.No.1438 of 2014 for the offence punishable under Section 138 of Negotiable Instruments Act and ordered issuance of summons to the accused. After appearance of the accused, the copies of the records were furnished to him under Section 207 of 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.

6.During trial, the complainant has examined himself as P.W.1 and examined one Abdul Nazir as P.W.2 and exhibited 9 documents as Ex.P.1 to Ex.P.9. After closure of the complainant's side evidence, when the accused was questioned under Section 313 (1) (b) of Cr.P.C, he denied the complainant's side evidence as false and further stated that a false case was foisted against him. Though the accused has stated that he is having defence evidence, he has not let in any evidence subsequently.

7.The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both the sides, has passed the judgment on 09.06.2016 convicting the accused for the offence under Section 138 of Negotiable Instruments Act and sentencing him to undergo one year simple imprisonment and to pay a compensation of Rs.2,30,000/- within a period of two months from the date of receipt of a copy of the judgment under Section 357 (3) Cr.P.C, in default to undergo two months simple imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has preferred an appeal in Crl.A.No.46 of 2016 and the learned Additional District and Sessions Judge, Periakulam, on perusing the records and on hearing the arguments of both the sides, has passed the impugned judgment on 13.04.2017, dismissing the appeal and thereby confirming the judgment of conviction and sentence passed in S.T.C.No.1438 of 2014, dated 18.07.2016 by the learned Judicial Magistrate, Periakulam. Not satisfying with the judgment of the Appellate Court, the accused has come forward with the present revision.

8. Whether the concurrent judgments of conviction passed in Criminal Appeal No.46 of 2016, dated 14.04.2017 on the file of the Additional District and Sessions Court, Theni at Periyakulam, confirming the judgment made in S.T.C.No.1438 of 2014, dated 09.06.2016, on the file of the Court of the Judicial Magistrate, Periyakulam, is liable to be set aside ? is the point for



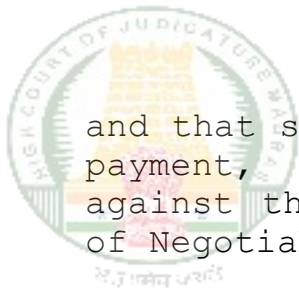
9.At the out set, it is necessary to refer Section 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption.

"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."

10.It is the specific case of the complainant that the accused borrowed a sum of Rs.2,30,000/- on 06.02.2012 to meet out the medical expenses of his parents and to help his father-in-law to complete the construction work in the portion of the house owned by his wife, that when the cheque was sent for collection, the same was returned dishonored, that when the amount covered by the cheque was demanded, the accused and his family members had treated the complainant badly and threatened him and that therefore, the complainant was forced to lodge a complaint before the District Superintendent of Police, Theni on 10.07.2012 under Ex.P.1, that subsequently, the complainant has submitted his complaint before the District Collector on 12.08.2013 and received the acknowledgment under Ex.P.2, that the accused issued another cheque, dated 15.04.2014 for Rs.2,30,000/- drawn on Indian Overseas Bank, Periakulam Branch under Ex.P.3, that when the said cheque was presented for collection, the same was returned dishonoured for want of sufficient funds in the bank account of the accused through the bank memo dated 15.04.2014 under Ex.P.4, that the complainant has then lodged a complaint before the District Superintendent of Police, Theni on 05.05.2014 under Ex.P.5, that the accused after coming to know about the complaint, has requested the complainant to present the cheque again and accordingly, the complainant has presented the cheque for collection on 15.05.2014, that the cheque was again returned dishonoured for want of sufficient funds in the bank account of the accused through bank memo dated 15.05.2014 under Ex.P.6, that thereafter, the complainant has issued a legal notice, dated 22.05.2014, to the accused demanding to pay the amount covered by the cheque under Ex.P.7 through RPAD vide receipt under Ex.P.8, that the accused has received the statutory notice on 23.05.2014 as evidenced from the receipt issued by the Indian Post under Ex.P.9



and that since the accused has neither sent any reply nor made any payment, the complainant was forced to prefer the complaint against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

11.The complainant as P.W.1, has given evidence reiterating the complaint contentions and he has deposed about the liability of the accused, issuance of cheques therefor, dishonour of cheques on the ground of 'funds insufficient', issuance of the statutory notice and failure of the accused to pay the amount within stipulated time.

12.According to P.W.1, P.W.2, who is his friend, was aware of the entire transactions, which also includes the issuance of the cheque and the consequent dishonour of the same. P.W.2 in his evidence before the trial Court would reiterate the version of the complainant regarding the borrowal of the loan by the accused, issuance of the cheques and consequent dishonour of the same.

13.It is pertinent to mention that the accused, after receipt of the legal notice, has not sent any reply notice and he has not offered any explanation for not sending any reply. As already pointed out, the accused has not chosen to adduce any evidence, but on considering the cross examination of P.W.1 and P.W.2, the defence of the accused can be summarized as follows ;

The accused has issued a cheque in favour of the complainant's son-in-law and the complainant in an attempt to get money from the accused has utilized the cheque and filed the case. The complainant has no means or capacity to advance the loan amount. The complainant without the knowledge of the accused had entered into the sale agreement for the land of the accused with his friend. The accused has not borrowed any amount from the complainant and never issued any cheque to him.

14.Considering the above stand of the accused, it is very much clear that the accused had admitted the issuance of Ex.P.3 cheque, but according to him, the cheque was issued to the complainant's son-in-law siddque. Whatever it is, as rightly observed by the trial Court as well as the Appellate Court, the accused has admitted that the cheque in dispute Ex.P.3 was belonging to him and that he had not disputed the signatures found in Ex.P.3 cheque. Consequently, both the Courts below have rightly drawn the presumption under Section 139 and 118 of Negotiable Instruments Act in favour of the complainant.

15.As rightly contended by the learned counsel for the accused, the presumption under Sections 118 and 139 of the Negotiable Instruments Act are rebuttable in nature. It is



pertinent to note that the statutory presumption is always rebuttable and once acceptable rebuttal 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. It is 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 probability.

16.In the present case, as already pointed out, the accused has disputed the alleged loan transaction existed between him and the defacto complainant, but admitted the issuance of the cheque to the complainant's son-in-law. As rightly contended by the complainant's side, the accused, at no point of time, disputed the signature found in Ex.P.3 cheque.

17.In the revision grounds, a plea was raised that the accused has no bank account and the said cheque was not belonging to him, but the same was not raised before the trial Court. It is not the specific case of the accused that he has produced materials to prove the said plea before the Court below, but the same were not considered. As already pointed out, the cheque was returned twice for the reason as 'funds insufficient' and not on any other ground, more particularly, on the ground that no such account was in favour of the accused,

18.No doubt, the accused has taken another stand that the complainant was not having sufficient means or capacity to advance the loan, but the same was dealt with by the trial Court as well as the appellate Court. As already pointed out, the accused has taken a stand that Ex.P.3 cheque was issued only to the complainant's son-in-law Sidque and he has not produced any evidence to substantiate the same. Though P.W.1 and P.W.2 were subjected to cross examination, nothing was elicited by the defence in their favour.

19.The defence has neither produced any materials nor shown any facts and circumstances to infer that the defence put forth by the accused is probable.

20.Considering the above, this Court has no hesitation to hold that the accused has not rebutted the statutory presumption under Section 139 of Negotiable Instruments Act. Hence, this Court decides that the finding of the trial Court as well as the Appellate Court, that the accused is guilty of the offence under Section 138 of Negotiable Instruments Act, cannot be found fault with. The Court is in entire agreement with the concurrent



judgments of conviction passed by the Courts below.

21.Now coming to the punishment, as already pointed out, the learned Judicial Magistrate has convicted the accused and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.2,30,000/- within a period of 2 months, in default to undergo two months simple imprisonment and the learned Appellate Judge has also confirmed the sentence imposed by the trial Court.

22.Considering the nature of the offence and the 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 judgment passed by the Courts below and consequently, this Court concludes that the criminal revision, which is devoid of merits, is liable to be dismissed.

23.In the result, the Criminal Revision Case is dismissed. The trial Court is directed to take necessary steps to secure the accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

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To

1.The Principal District and Sessions Judge, Theni.

2.The Judicial Magistrate, Periyakulam.

3. Do through the Chief Judicial Magistrate, Theni.

Copy to

The Section Officer,
Criminal Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

CRL.R.C. (MD) .No.712 of 2017
09.04.2021

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