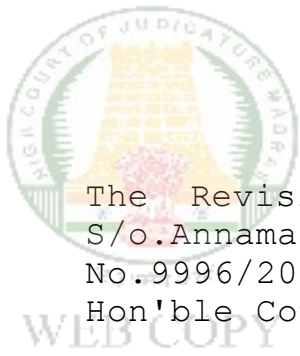




Bail Slip

The Revision Petitioner/Accused namely, Rathinam, M/53 Years, S/o.Annamalai Pillai, was released on bail in CRL.MP(MD) No.9996/2017 in CRL.R.C.(MD).No.807 of 2017 on 08.12.2017 by this Hon'ble Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.03.2021

Pronounced On : 30.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.807 of 2017

Rathinam : Petitioner / Appellant/ Accused
Vs.

Balasubramanian : Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, against the judgment of the learned I Additional Sessions Judge, Tirunelveli Division at Tirunelveli made in C.A.No.57 of 2014, dated 14.02.2017 by confirming the order of conviction and sentence imposed by judgment dated 02.06.2014 made in S.T.C.No.1317 of 2012 directing the accused to undergo six months of Rigorous Imprisonment for the offence alleged to have been committed under Section 138 of Negotiable Instrument Act along with a direction to pay a sum of Rs.3,50,000/- as compensation under Section 357(3) of Cr.P.C payable to the respondent/complainant within one months in default to undergo one more month simple imprisonment.

For Petitioner : Mr.J.Sankara Pandian

For Respondent : Mr.S.Balaji

ORDER

The Criminal Revision Case is directed against the concurrent judgments of conviction passed in C.A.No.57 of 2014, dated 14.02.2017 on the file of the learned Additional District and Sessions Court, Tirunelveli, confirming the judgment made in S.T.C.No.1317 of 2012, dated 02.06.2014 on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi.

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

<https://hsempeservices.gov.in/hsempes>



petitioner/appellant/accused for the offence punishable under Section 138 of Negotiable Instruments Act.

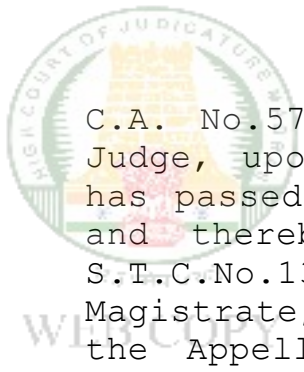
3.For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the trial Court.

4.The case of the complainant is that the accused is his friend for more than 5 years and also a neighbour, that the accused approached the complainant on 03.03.2012 and borrowed a sum of Rs.3,50,000/- to meet out his urgent family expenses, agreeing to repay the same within a month, that when the complainant had demanded the accused to repay the loan amount, he issued a cheque bearing No.303807, dated 16.06.2012, drawn on Corporation Bank, Tirunelveli for Rs.3,50,000/- that the complainant has sent the cheque for collection through his bankers State Bank of India, Tirunelveli Town Branch, but the same was returned dishonoured as 'funds insufficient', that the complainant has then sent a legal notice dated 10.07.2012 to the accused, directing him to pay the amount covered by the cheque, that the accused received the said statutory notice on 11.07.2012 and sent a reply dated 16.07.2012 with false allegations and that since the accused has not paid the amount, the complainant was forced to lodge a complaint under Section 138 of Negotiable Instruments Act.

5.The learned trial Judge, after receiving the complaint, has recorded the sworn statement of the complainant and on perusing the records, after statisfying that there existed a *prima facies* case, has taken the case on file in S.T.C.No.1317 of 2012 for the offence under Section 138 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.

6.During trial, the complainant has examined himself as P.W.1 and exhibited six documents as Ex.P.1 to Ex.P.6. The accused has adduced neither oral nor documentary evidence.

7.The learned Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the judgment on 02.06.2014, convicting the accused for the offence under Section 138 Negotiable Instruments Act and sentenced him to undergo six months rigorous imprisonment and to pay a compensation of Rs.3,50,000/- to the complainant under Section 357 (3) Cr.P.C within one month from the date of judgment in default, to undergo one month simple imprisonment. Aggrieved by the said judgment of conviction, the accused has preferred an appeal in



C.A. No.57 of 2014 and the learned Additional District Sessions Judge, upon perusing the records and on hearing both the sides, has passed impugned judgment on 14.02.2017, dismissing the appeal and thereby confirming the judgment of conviction passed in S.T.C.No.1317 of 2012, dated 02.06.2014 by the learned Judicial Magistrate, Cheranmahadevi. 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 C.A.No.57 of 2014, dated 14.02.2017 on the file of the learned Additional District and Sessions Court, Tirunelveli, confirming the judgment made in S.T.C.No.1317 of 2012, dated 02.06.2014 on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi, are liable to be set aside, is the point for consideration ?

9. When the above matter was taken up earlier, the learned counsel for the revision petitioner would submit that the accused had already undergone the period of imprisonment including the default period and that nothing survives for further adjudication.

10. Since the learned counsel for the complainant has raised doubt about the imprisonment undergone by the revision petitioner, this Court has called for a report from the District Legal Services Authority, Tirunelveli, as to whether the accused had already undergone the sentence imposed on him ?. After receiving the reports from the learned District Munsif cum Judicial Magistrate, Cheranmahadevi and from the Superintendent of Prison, Central Prison, Palayamkottai, the District Legal Service Authority has sent a report dated 23.03.2021, stating that the revision petitioner/accused had already undergone the sentence imposed on him, including the default sentence for non-payment of compensation amount and has been released from the Central Prison, Palayamkottai on 09.11.2018.

11. When the above factum was brought to the notice of the learned counsel on either side, the learned counsel for the respondent would submit that the respondent/complainant was reported death and that the legal heirs of the complainant are to be impleaded.

12. The learned counsel for the petitioner would submit that he has no instructions either to withdraw the revision or to proceed with the case and hence he is leaving it to the discretion of the Court to pass necessary orders.

13. As already pointed out, the trial Court has also awarded compensation under Section 357(3) Cr.P.C and the same was



confirmed by the Appellate Court. Since no adverse order is going to be passed against the respondent/complainant, it is not necessary for the impleadment of the legal representatives of the deceased complainant at this stage.

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

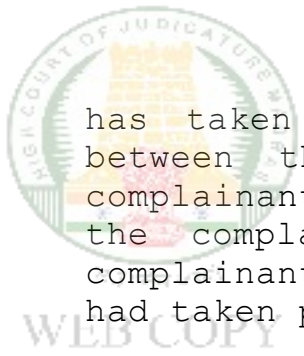
"118. ...

(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."

15. It is the specific case of the complainant that the accused borrowed a sum of Rs.3,50,000/- on 03.03.2012 to meet out his urgent family expenses as a hand loan, agreeing to repay the same within a month, that when the complainant had demanded the accused to repay the loan amount, the accused in order to discharge the said hand loan, has issued a cheque bearing No.303807 drawn on Corporation Bank, Tirunelveli dated 16.06.2012 for Rs.3,50,000/- under Ex.P.1, that the complainant sent the cheque for collection through his Bankers State Bank of India, Tirunelveli Town Branch, that the said cheque was returned dishonoured for want of funds in the bank account of the accused vide memo dated 20.06.2012 under Ex.P.2 and the same was intimated to the complainant by his bank State Bank of India vide memo dated 26.02.2012 under Ex.P.3, that the complainant has then sent a legal notice dated 10.07.2012 to the accused under Ex.P.4 demanding to pay the amount covered by the cheque, that the accused has received the statutory notice vide acknowledgement card under Ex.P.5, that the accused has sent a reply notice dated 16.07.2012 under Ex.P.6 with false allegations and that since the accused has not made any payment, the complainant was constrained to prefer the complaint.

16. The complainant as P.W.1 has given evidence reiterating the complaint contentions. He has deposed about the liability of the accused, issuance of the cheque therefor, dishonour of the cheque on the ground of want of the funds in the bank account of the accused, issuance of the statutory notice and the failure of the accused to pay the amount within the stipulated time. The accused



has taken the defence that there existed no loan transaction between the complainant and the accused as claimed by the complainant and that he did not issue any cheque in question to the complainant and that the said cheque was given to the complainant as security for the earlier loan transaction, which had taken place several years back.

17.Considering the above stand of the accused, it is very much clear that he has admitted that cheque was belonging to him and the signature found in the cheque was that of his signature. It is pertinent to mention that the accused has not denied the signature found in Ex.P.1 cheque specifically. On considering the evidence available, the trial Court as well as the Appellate Court have rightly drawn the presumption under Section 139 of Negotiable Instruments Act in favour of the complainant.

18.More over, the statutory presumption under Sections 118 of Negotiable Instruments Act is also very much available in favour of the complainant. It is pertinent to mention that the presumption under Sections 118 and 139 of Negotiable Instruments Act are rebuttable in nature and 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.

19. In the case on hand, the accused has disputed the loan transaction alleged by the complainant and the issuance of cheque therefor. More over, it is the specific stand of the accused that he issued Ex.P.1 cheque and two other cheques to the complainant as security for the loan transaction took place several years back. As already pointed out, the accused has adduced neither oral nor documentary evidence. He has nowhere whispered about the steps, he had taken to get back the cheques issued earlier. Though the complainant was subjected to cross examination, the defence has not elicited anything in their favour so as to rebut the presumption drawn in favour of the complainant.

20.Considering the above, this Court is of the clear view that the accused has miserably failed to rebut the presumption drawn in favour of the complainant under Section 139 of Negotiable Instruments Act. Hence, this Court is of the view 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 and this Court is in entire agreement with the concurrent judgments of conviction passed by the Courts below.



21.Now turning to the punishment, as already pointed out, the accused has already undergone the period of imprisonment and also the default sentence for non-payment of compensation. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court passed in **Crl.A.Nos.896 - 897 of 2017 (Kumaran Vs. State of Kerala and another)**, and the question that arises for consideration of the Hon'ble Supreme Court is as to whether when compensation is ordered as payable for an offence committed under Section 138 of the Negotiable Instrument Act, and in default thereof, a jail sentences is prescribed and undergone, is compensation still recoverable and in that case, the trial Court has convicted the accused for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo four months simple imprisonment and to pay a compensation of Rs.2,75,000/- under Section 357 (3) Cr.P.C in default to undergo one month simple imprisonment. When the said judgment was questioned in the appeal, the Court of Sessions has confirmed the conviction and also sustained the order to pay compensation, but, reduced the sentence to imprisonment till rising of the Court. When that judgment was challenged, the Kerala High Court has held that despite the fact that the default sentence was undergone, yet, under the provisions of the Code of Criminal Procedure, compensation was recoverable. The Supreme Court while confirming the decision of the High Court has held "The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421 (1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 IPC and Section 421(1) proviso would make it clear that by a legal fiction, even though a default sentence has been suffered, yet, compensation would be recoverable in the manner provided under Section 421(1). This would, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by applying the fiction contained in Section 431, to compensation payable under Section 357(3)."

22.The above decision is squarely applicable to the case on hand. In the present case, though the accused has already undergone the default period for non-payment of compensation, the



compensation amount is still recoverable. Since the complainant is reported dead, his legal representatives are at liberty to recover the compensation in accordance with law.

23. In the result, the Criminal Revision Case is dismissed and the judgment of conviction and the award of compensation passed by the Courts below are confirmed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

1. The I Additional District and Sessions Judge,
Tirunelveli.
2. The District Munsif cum Judicial Magistrate,
Cheranmahadevi.
3. The Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

CRL.R.C. (MD) .No.807 of 2017
30.04.2021

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