

BAIL SLIP

The Petitioner / Accused Kanagadurai, Proprietor was released on bail as per Order of this Court dated 18.01.2019 in CrI.M.P.No.824 of 2019 in CrI.R.C.No.No.84 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.84 of 2019

Kanagadurai

...Petitioner

Versus

1.K.S. Santhosh,
Proprietor
M/s. Quality Equipments & Suppliers,
No.213, Rangakonar Street,
Ram Nagar (PO), Kattoor,
Coimbatore.

2.The State,
Rep. by Public Prosecutor,
Coimbatore.

...Respondents

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C., to set aside the judgment of dismissal passed in C.A.No. 100 of 2017, dated 26.09.2018 passed by the learned III Additional District and Sessions Judge, Coimbatore, confirming the judgment of conviction passed in C.C.No. 58 of 2015 by the learned Judicial Magistrate [Fast Track Court No.I], Coimbatore, dated 13.04.2017.

For Petitioner : Mr.V.Sivakumar

For R1 : Mr.T.Muthukrishnan

For R2 : Mr.S.Vinoth Kumar
Government Advocate (CrI. Side)

ORDER

This Criminal Revision Case is filed by the petitioner/accused aggrieved by the judgment of the learned Judicial Magistrate [Fast Track Court No.I], Coimbatore, dated 13.04.2017 passed in C.C.No. 58 of 2015 in and by which, he was convicted for the offence under Section 138 of the Negotiable Instruments Act, and sentenced to undergo simple imprisonment for a period of six months and to pay the cheque amount of Rs.2,00,000/- as compensation within two months from the date of the judgment, which was confirmed by the judgment of the learned III Additional District and Sessions Judge, Coimbatore, dated 26.09.2018 in C.A.No. 100 of 2017 by dismissing the appeal.

2. Heard Mr.V.Sivakumar, learned counsel for the petitioner, Mr. T. Muthukrishnan, learned counsel appearing for the first respondent and Mr.S.Vinoth Kumar, learned Government Advocate (Crl. Side) appearing for the second respondent and perused the materials placed on record.

3. The learned counsel for the petitioner would submit that this is a case in which the Complainant claims that the cheque was issued towards supply of Lathe Machines in the year 2012. According to the learned counsel, no such supply of Lathe Machines was made and the invoices produced by the Complainant do not bear the signature of the petitioner/accused. The Complainant has not produced any document to show that the petitioner-accused has placed an order for supply of the machinery or when the order was made. This apart, in the cross-examination of the Complainant, he admitted that there was no transaction taken place between the complainant and the accused after January 2013. Thus, for having supplied Lathe Machines allegedly during the year 2012, no reasonable man would accept payment belatedly in the year 2013. The cheque was issued in respect of an earlier transaction and it was misused and presented by the complainant. Therefore, he would submit that the accused has raised a probable defence and rebutted the presumption raised by the complainant, but it was not properly considered by the Trial Court as well as the Lower Appellate Court.

4. Per contra, the learned counsel appearing for the Complainant would submit that even the demand notice sent under Section 138 of the Negotiable Instruments Act has been refused by the accused and no reply, whatsoever has been sent by him. He would submit that the learned counsel for the petitioner has conveniently read only one sentence of the answer of the complainant in the Cross-examination without mentioning the previous sentence, in which, it has been stated that at the end

of the year 2012-2013, the machineries were supplied. The complainant also clearly stated about the factum of delivery of the goods supplied. In the Cross-examination the accused did not elicit any further answer in his favour. In any event, the petitioner-accused admitted having issued a cheque, the complainant presented it but it was dishonoured. On such dishonour, a demand notice was issued and thereby the complainant raised a valid presumption under Section 118 of the Negotiable Instruments Act, read with Section 139 of the said Act. The accused has not raised his little finger to rebut the presumption and therefore, the Lower Appellate Court was right in confirming the conviction imposed by the trial Court. He therefore prayed for dismissal of the Revision.

5. I have considered the rival submissions made on either side and perused the materials on record.

6. The Complainant had prima facie produced the cheque. The signature of the cheque was admitted by the petitioner/accused. The Complainant has proved the ingredients of Section 138 of the Negotiable Instruments Act, by presenting the cheque, which was returned dishonoured. Thereafter, he issued a demand notice for payment of money covered in the cheque thereby he raised a clear presumption under Section 118 and 139 of the Negotiable Instruments Act. Therefore, the only question for consideration is the liability on the part of the accused, which he disputes.

7. The defence of the accused is that no such machinery was supplied to him by the complainant. In this case, the presumption under Section 118 and 139 of the Act, comes to the aid of the Complainant. It is seen that the accused to prove his probable defence. Except for getting one answer from the Complainant that after January, 2013, there was no materials supplied, no other answer has been elicited in the Cross-examination of the Complainant in favour of the accused.

8. As per the Complainant, the Lathe Machines were supplied on 21.11.2012 and on 18.01.2013. The complainant also, in the Chief-examination reiterated it and marked documents to that effect. Therefore, the said statement of the complainant, coupled with the presumption under the Act, which was not disproved by the accused by probable defence. This apart, no evidence whatsoever has been let-in by the accused in any manner to show that the machine was not at all supplied. The accused also accepted that he had issued the cheque. He also admitted his signature in the cheque. Therefore, the accused had miserably failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. There is no merit in this Revision and it is accordingly dismissed. However, two weeks

time from today is granted to the petitioner/accused to surrender and undergo the remaining period of sentence.

9. Accordingly, this Revision is dismissed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

msm

To

1.The III Additional District
and Sessions Judge, Coimbatore.

2.The Judicial Magistrate,
Fast Track Court No.I,
Coimbatore.

3.The Public Prosecutor,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Sivakumar, Advocate Sr.No.38750

+1cc to Mr.T.Muthukrishnan, Advocate Sr.No.39236

Cr1.R.C.No. 84 of 2019

AD(CO)
RVM(15/07/2022)