



BAIL SLIP

The Petitioner/Accused Namely K.Deenadayalan S/o.Krishnappa Naidu, was directed to be released on Interim Bail vide order dated 31.01.2019 made in Crl.MP.No.1565/2019 in Crl.RC.No.172/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D. BHARATHA CHAKRAVARTHY

Crl.R.C.No. 172 of 2019

K. Deenadayalan ... Petitioner/Accused

Versus

N. Selvakumar ... Respondent/Complainant

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C., to set aside the Judgment of conviction and sentence to undergo simple imprisonment for six months and also to pay cheque amount to the complainant passed by the learned III Additional Sessions Judge, Chennai in C.A.No.256 of 2017, dated 09.10.2018 while confirming the conviction and sentence imposed by the learned Metropolitan Magistrate, Fast Track No.III, Saidapet, Chennai - 600 015 in C.C.No. 1885 of 2012, dated 19.08.2017.

For Petitioner : Ms.V. Valarmathi
Legal Aid Counsel

For Respondent : Mr.P. Suresh

ORDER

This Criminal Revision is filed by the petitioner/accused aggrieved by the judgment of the learned Metropolitan Magistrate [Fast Track Court No.III, Saidapet, Chennai], dated 19.08.2017 in C.C.No.1885 of 2012 in and by which, he was convicted for an 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 as compensation to the complainant, which was confirmed by the judgment of the learned III Additional Sessions Judge, Chennai, dated 09.10.2018 in C.A.No. 256 of 2017 while dismissing the appeal filed by the petitioner herein.

2. When the matter came up for hearing on 09.06.2022, this Court after noticing earlier order dated 07.01.2021, whereby, this Court vacated the order granting suspension of sentence since the petitioner did not comply with the conditional order. Thereafter, when the matter came up for hearing since there was no representation for the petitioner, this Court appointed Ms.C.Valarmathi, learned Legal Aid Counsel to prosecute the above Criminal Revision Case on behalf of the petitioner and posted the matter today for arguments.

3. Accordingly, today, this Court heard the submissions made by the learned Legal Aid Counsel and Mr.P. Suresh, learned counsel appearing on behalf of the respondent.

4. The learned Legal Aid Counsel appearing for the petitioner would submit that this is a case where the complainant alleges that the accused had returned the advance money by means of a cheque and it was dishonoured on its presentation. According to the learned counsel, there is no agreement of sale which was marked by the complainant to show the nature of transaction with the petitioner/accused. It is the specific pleading of the accused that on the strength of the police complaint, the cheque has been extracted from him in the police station. When the complainant has not specifically pleaded the liability and the accused has raised the probable defense that the cheque has been extracted from him in the police station, the accused has rebutted the presumption. The trial Court as well as the Lower Appellate Court, in the absence of any further proof for advancement of Rs.5,00,000/- by the complainant, ought not to have convicted the petitioner.

5. The learned counsel appearing for the petitioner would further submit that the accused had examined himself as DW1 and on his behalf Ex.D1 to Ex.D4 were also marked to rebut the initial presumption raised by the complainant. The trial Court as well as the First Appellate Court without considering the probable defence raised by the petitioner, erroneously convicted him.

6. Per contra, the learned counsel appearing on behalf of the respondent/complainant would submit that this is a case where



the accused pleads that the cheque was obtained by him by duress. However, to prove the same, the accused did not take any steps, including issuing notice to the police officials for allegedly extraccting the cheque from him. This apart, the petitioner did not even produce any document to show as on what date and time etc., the cheque was extracted from him. In the reply notice as well as in the chief-examination, the accused did not deny the transaction with the complainant. However, in his cross-examination, he has admitted the earlier transaction of sale of one property to the complainant. The complainant also marked Ex.P7, letter of undertaking. The signature of the petitioner/accused in the said cheque as well as the letter of undertaking are not disputed by the accused. Therefore, the complainant has proved the guilt of the petitioner/accused beyond reasonable doubt and the Trial Court as well as the First Appellate Court correctly convicted and sentenced him. The learned counsel therefore prayed for dismissal of this Revision case.

7. I considered the rival submissions made on behalf of both sides and perused the material records of the case.

8. As rightly contended by the learned counsel appearing for the respondent, if the cheque has been extracted in the police station, then the accused should have taken steps by lodging a complaint to the higher officials which is not done in the instant case. The complainant is able to establish that there was an earlier transaction of sale of immovable property between the complainant and the accused which proved his case. This apart, the letter of undertaking is also given by the accused which corroborates the legal liability of the petitioner/accused for Ex.P1-Cheque. Therefore, this is a case where the petitioner/accused was not successful in establishing any probable defence and therefore, the presumption under Section 118 and 139 of the Negotiable Instruments Act, come to the aid of the complainant. In such event, the complainant need not further establish the fact that he had given Rs.5,00,000/- in cash by further evidence. The complainant has discharged his onus so as to raise the presumption by examining himself and proved the complaint by marking Ex.P1-cheque and Ex.P7 letter of undertaking. Therefore, this Criminal Revision Case filed by the petitioner/accused is without any merits and it is liable to be dismissed by confirming conviction and sentence passed by the courts below.



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9. Accordingly, this Criminal Revision Case is dismissed by confirming the conviction and sentence imposed by the Trial Court.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

msm

To

1.The III Additional Sessions Judge, Chennai.

2.The Metropolitan Magistrate, [Fast Track Court No.III]
Saidapet, Chennai - 600 015.

3.Do-Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.V.Valarmathi , Advocate SR.No.38789

Cr1.R.C.No. 172 of 2019

RSI (CO)
CB(08/07/2022)