

BAIL SLIP

The Petitioners/Accused/Viz; P.N.Madhavan, S/o.Nataraj was released on bail as per the Order of this Court dated 06/05/2015 in CrI.MP.No.1 of 2015 in CrI.RC.No.440 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.06.2022
CORAM:

THE HON'BLE DR.JUSTICE G. JAYACHANDRAN

CrI.R.C.No.440 of 2015
and
M.P.No.1 of 2015

P.N.Madhavan

... Petitioner

Vs

N.Devaki

... Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 r/w Section 401 of Cr.P.C. to set aside the judgment passed in Criminal Appeal No.78 of 2014 dated 20.03.2015, on the file of the learned III-Additional Sessions Judge, Thiruvallur at Poonamallee, confirming the conviction and sentence to under go simple imprisonment for 3 months and imposed fine of Rs.3000/- in default one month simple imprisonment for the offence under section 138 of Negotiable Instrument Act, 1881, imposed by the learned Fast Track Court, Magistrate Level-II, Poonamallee, on 30.07.2014 in S.T.C.No.118 of 2012.

For Petitioner: Mr.S.Sairaman

For Respondent : No appearance

ORDER

This appeal is filed against the concurrent finding of the Court below in a matter arising under Section 138 of Negotiable Instrument Act, 1881.

2. The main substance of the complaint is that the petitioner herein is a known person to the complainant. To

purchase lorry, the petitioner borrowed a sum of Rs.4,50,000/- from the complainant and promised to repay it in due course. However, he failed to pay the money. After persistent demands, he issued two cheques one for Rs.3,00,000/- (Rupees Three Lakhs only) bearing No.253792 dated 12.12.2008 drawn on Andhra Bank, Avadi Branch. Another cheque for Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) bearing No.064848 dated 12.01.2009, drawn on Union Bank of India, Avadi Branch. When these two cheques were presented for encashment, they returned with an endorsement stating "insufficient funds". The accused was informed about the bouncing of cheque through a statutory notice dated 14.03.2009. The accused gave a reply containing false facts. Hence, the private complaint under Section 200 r/w 138 of the Negotiable Instrument Act, 1881.

3. To prove the complaint, the complainant has examined herself and marked 8 exhibits. To rebut the presumption, defendant has examined himself as Dw1 and his friend Krishnamurthu as DW2. The 2 exhibits are marked on his behalf.

4. The defence of the accused was that the said cheques was not signed by him, he is not the drawer of the cheques. The cheque was given as security for the loan availed by him from the husband of the complainant. The said loan was repaid through bank, transferring a sum of Rs.2,65,000/- into the account of the complainant's husband, as requested by the complainant. However, the cheque was not returned. The complainant is in the habit of charging exorbitant interest and grab the properties of the borrower. He had already initiated a suit against the mother-in-law of the accused.

5. The Trial Court, after considering the fact that the cheque were drawn from the account maintained by the accused and the signature found in the cheques proved to be drawn by the accused. Since no contra evidence available and the alleged transaction between the husband of the complainant and the accused or the suit between the complainant and the mother-in-law of the accused have no relevance to the facts. Hence, held the accused guilty of offence under Section 138 of Negotiable Instrument Act, and sentenced him to under go three months imprisonment and fine of Rs.3,000/- (Rupees Three Thousand Only).

5. The said Trial Court judgment was challenged before the Appellant Court. The Appellant Court on re-appreciating the evidence found no merits in the appeal and hence, dismissed the appeal confirming the judgment of the Trial Court passed in

S.T.C.No.118 of 2012.

6. The learned counsel appearing for the revision petitioner contended that the cheque was given as security and by propandables of the possibility, the said fact has been proved through the defence witnessess and two exhibits. The Court below failed to appreciate the defence documents and thereby erred in holding the revision petitioner guilty.

7. This Court on perusing the depositions of DW1 accused and DW2 Krishakumar , friend of the accused, in light of the exhibits D1 and D2 which are the Bank Passbook account and the copy of the plaint in O.S.No.66 of 2009 find that neither the oral testimony of the defence witness nor the documentary evidence adduced by the accused substantiate the plea of the defence.

8. Contratrily, the complainant by producing her bank passbook, marked as Ex-P8 has established that she had been holding and operating bank account since 1992 and there is no necessity for her to ask the accused to transfer the money payable to her into the account of her husband, on the protest that she does not possess any bank account. Further, when the defence taken by the accused that the signature found in the cheque is not affixed by him, the returned memo Ex-P3 and Ex-P4, does not reveal that the cheque was returned for the reason signature of drawer differs. It is returned for want of funds. The accused had not taken any steps to establish that the signature found in the subject cheques marked as exhibits P1 and P2 were not signed by him. He has not even suggested how the cheques maintained by him with or without his signature went to the hands of the complainant, other than the manner in which the complainant has spoken in the complaint as well as the deposition.

9. For the above said reasons, this Court find no error in the finding of the orders below. Hence, this Revision Petition is dismissed. The learned Magistrate is directed to secure the accused and remand him to prison to undergo the remaining period of sentence. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

gba

To

1.The Judicial Magistrate,
Fast Track Court No.II,
Poonamallee.

2.The Chief Judicial Magistrate,
Thiruvallur(for Information)

3.The III-Additional Sessions Judge, Thiruvallur,
Poonamallee

4.The Learned Fast Track Court,
Magistrate Level-II,
Poonamallee

5.The Public Prosecutor,
High Court, Madras

+1 cc to M/s.S.Sairaman Advocate sr41342

Crl.R.C.No.440 of 2015 and
M.P.No.1 of 2015

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