Bail Slip

The Appellant/Accused namely M.P.Selvaraj S/o Ponnusamy Gounder was directed to be released on bail in and by the order of this Court dated 12.09.2016 made in Crl.M.P.No.9591 of 2016 in Crl.R.C No.1104 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.No.1104 of 2016

M.P.Selvaraj … Petitioner

Vs.

M/s.Karnataka Soaps and Detergents Ltd.,
rep.by its Authorized representative
Muthian, Seven Star Building,
II Floor, A80 Anna Nagar,
Chennai 600 102. ... Respondent

PRAYER: Criminal Revision Petition has been filed under Sections 397 and 401 of Cr.P.C, to call for the records pertaining to the order dated 12.07.2016 made in C.A.No.68/2014 on the file of the XVIII Additional Sessions Court, Chennai confirmed the order dated 26.02.2014 made in C.C.No.8187/2001 on the file of Metropolitan Magistrate, FTC-I, Egmore, Chennai and set aside the same.

For Petitioner : Mr.M.V.Venkataseshan

For Respondent : Mr.N.Karthikeyan

ORDER

This Criminal Revision petition has been preferred challenging the judgment of the learned XVIII Additional Sessions Court, Chennai dated 12.07.2016 passed in C.A.No.68 of 2014.

2.This case has arisen out of a private complaint made on the allegations that the complainant is a manufacturer and marketer of soaps, detergents and Agarbathis. The accused, who is the retailer in the same business, was having business transaction with the complainant. In the course of such transactions, the accused had outstanding amounts and had issued cheques for discharging the same. Three cheques bearing Nos.804179, 804182 and 804180 dated 30.11.2000, 13.12.2000 and 30.11.2000 for a sum of Rs.30,000/-, Rs.25,000/- and Rs.25,000/- was drawn on Canara Bank, Nasiyanoor Branch, was presented by the respondent for collection through the Corporation Bank, Kelly's Branch, Chennai. The said cheques were returned on 02.06.2001 with the endorsements “Exceeds Arrangement & Stale Cheque”, “Exceeds arrangement” and “Exceeds Arrangement & Stale Cheque” respectively. After issuing statutory pre-suit notice and complying with the legal mandates, the complainant has filed the complaint against the accused for committing the offence under Section 138 of the Negotiable Instruments Act as amended by the Act 66 of 1988. The case was taken on file by the learned Metropolitan Magistrate, Fast Track Court No.I at Egmore, Chennai, in C.C.No.8187 of 2001 and the trial was conducted.

3.On the side of the complainant, two witnesses were examined as P.W.1 and P.W.2 and twelve documents were marked as Ex.P.1 to Ex.P.12. On the side of the accused, no witness was examined and no document was marked.

4.After the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge found the accused guilty under Section 138 of N.I.Act, hence, convicted under Section 255(2) Cr.P.C. and sentenced him to undergo Simple Imprisonment for 1 year and the case cheque amount of Rs.25,000/- as compensation to be payable to the complainant within a period of 3 months from today under Section 357(3) Cr.P.C, in default to undergo Simple Imprisonment for a period of 3 months. Fine is not imposed.

5.Against the conviction, the petitioner has filed an appeal in C.A.No.68 of 2014 before the XVIII Additional Sessions Judge, Chennai and that was dismissed on 12.07.2016. Aggrieved over that the accused had preferred this Criminal Revision Case.

6.Heard the learned counsel for the petitioner/accused and the learned counsel for the respondent/complainant.

7.The learned counsel for the petitioner/accused submitted that the respondent/complainant is not an authorized person to file the case on behalf of the respondent's company; even as per the documents of the petitioner, one Muthian was given power to represent the company and he was given with the power only in the year 2003; since the complaint was filed in the year 2001, he is ineligible to represent the company; hence the complaint itself is not maintainable. The next contention raised by the learned counsel for the petitioner is that though the cheque was executed by the petitioner, it was not given for any enforceable debt and the respondent/complainant has not proved that the cheque was issued for a legally enforceable debt.

8.The learned counsel for the respondent/complainant submitted that when the complaint was filed in the year 2001, one Syed Iliyas was given power to represent the company; since he left the company, his successor by name S.Muthiah was given the power to represent the company, since the company was being represented all along by an authenticated person, it cannot be claimed that the person who represented before the Court did not have any authorization; when the execution of the cheque was not denied, the respondent/complainant is entitled to the initial presumption in his favour; and the burden is on the petitioner/accused to prove the contrary; he did not rebut the initial presumption by any acceptable evidence and hence the Courts below are right in finding the accused guilty under Section 138 of N.I.Act.

9.The fact that the respondent is a company is not in dispute. The only contention of the learned counsel for the petitioner is that the person who represented the company and by whom the complaint was filed before the Court did not have any authorization to represent the company on the day when the complaint was given. It is made clear that on the date, when the complaint was made, one Syed Ilyas held the power to represent the company. Since the said person had left the company, his successor, by name Muthian has been given with power to represent the company in the year 2003. Since the legal person before the Court is only a company, its employees like Branch Manager or Accountant would change from time to time. It cannot be said that the same person who had represented the company at some point of time should continue to represent the company at all times. Since there is a change in persons holding the posts, the complainant has amended the cause title and the name of the present power of attorney is included.

10.Despite the petitioner/accused has raised that Syed Iliyas did not have any power to represent the company. That was not established before the Court. In fact the respondent/defacto complainant company did not have any objection for Syed Iliyas to represent the company at the time when the complaint was filed. In the absence of any denial by the respondent company itself, I am not able to countenance the arguments of the learned counsel for the petitioner that the person, who represented the company, had no due authorization. The Court below have rightly appreciated this point in favour of the respondent/complainant.

11.Once the execution of the cheque is not denied, it is needless to point out the initial presumption under Sections 118 and 139 of N.I.Act, goes in favour of the respondent/complainant. The financial capacity of the company cannot be in question because the money was not given as loan. It is also not in dispute that there was business transaction between the complainant and the accused.

12.So in these type of the cases, the burden is on the petitioner/accused to rebut that the amount shown in the cheque is not for discharge of any debt. Mere statements or suggestions made in this context during the cross examination of the petitioner's witness is not sufficient to serve as rebuttal proof in favour of the petitioner/accused. Even, if it is not obligatory on the part of the petitioner/accused to get into the box and produce any materials on his own, it should be shown that from the materials produced by the complainant itself that the claim of the complainant is improbable and inappropriate. The Courts below have correctly appreciated the evidence in proper perspective and held that the cheque was issued for legally enforceable debt only.

13.In view of the same, this Court does not find any infirmity or illegality in the order of the Courts below. Accordingly, the conviction and sentence imposed on the petitioner by the Courts below is confirmed. The cheque amount of Rs. 25,000/- as ordered to be paid by the petitioner is confirmed, which shal be paid within a period of three months from the date of receipt of a copy of this order. Accordingly, the criminal revision petition is dismissed with the abovesaid direction.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sms/mpl
To

1.The XVIII Additional Sessions Court,
Chennai.

2.The Metropolitan Magistrate, FTC-I,
Egmore, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai (for Information).

+1cc to Mr.N.Karthikeyan, Advocate Sr.63415
+1cc to Mr.M.V.Venkataseshan, Advocate Sr.63985

CRL.R.C.No.1104 of 2016

mt[co]
srg 28/03/2022