BAIL SLIP

The Petitioners/Accused namely S.Subramani, S/o.Sadasivam was directed to be released on Bail by order of this Court dated 29/01/2016 made in Crl.M.P.No.852 of 2016 in Crl.RC.No.122 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| RESERVED ON | 01.12.2021 |
| PRONOUNCED ON | 07.01.2022 |

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.RC.NO.122 OF 2016

S.Subramani ... Petitioner/Accused

.Vs.

1. Devasankarakumar

2. The State Rep. By
   The Public Prosecutor,
   Erode. ... Respondents

PRAYER:-

This Criminal Revision Case is filed under Section 397 & 401 Crl.P.C., seeking to set aside the conviction imposed in the judgement dated 22.01.2015 made in C.C.No.55 of 2011 on the file of the Judicial Magistrate No.III, Erode and the same was confirmed by judgement dated 22.12.2015 made in C.A.No.16 of 2015 on the file of the II Additional District Sessions Judge, Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.K.Karthikeyan [R1]

Mr.A.Gopinath [R2]
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgement of the learned II Additional District Sessions Judge, Erode dated 22.12.2015 passed in C.A.No.16 of 2015.

2. This case has arisen out of a private complaint filed by the first respondent/defacto complainant on the allegation that on 18.11.2010, the petitioner/accused had availed a loan of Rs.18,00,000/- from him and on the same date, he issued a post dated cheque dated 18.12.2010 drawn on the Bank of Maharashtra, Erode Branch, for a sum of Rs.18,00,000/-. When the cheque was presented for collection on 18.12.2010 as per the request of the accused, it was returned as insufficient funds. After sending the statutory notice and complying the legal mandates, the complainant has filed the private complaint against the accused for punishing him for the offence under Section 138 r/w 142 of Negotiable Instruments Act. After the case was taken on file and after furnishing copies, the accused was questioned. Since he denied his involvement, the trial was conducted.

3. On the side of the first respondent/defacto complainant, he examined himself as P.W.1 and Exs.P1 to P5 were marked. On the side of the accused, no witness was examined and no document was marked.

4. After concluding the trial and on considering the materials available on record, the learned trial Judge found the accused guilty under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year Simple Imprisonment and imposed a fine of Rs.5,000/- in default to undergo one month Simple Imprisonment. The accused challenged the above judgement by preferring the appeal in C.A.No.16 of 2015 before the II Additional District Sessions Judge, Erode and the same was also dismissed. Aggrieved over that, the petitioner/accused has filed this present revision.

5. The learned counsel for the petitioner/accused submitted that the impugned cheque is not issued by the petitioner/accused for a legally enforceable debt. The defacto complainant does not have financial wherewithals to lend a sum of Rs.18,00,000/- to the petitioner/accused. It is highly unbelievable that a huge sum of Rs.18,00,000/- has been given as loan without getting any documents for security. The improbabilities in the case of the first respondent/defacto complainant would amount to rebutting the initial presumption that has arisen in favour of the first respondent/defacto complainant under Section 138 of N.I. Act and hence, the revision should be allowed.

6. The learned counsel for the first respondent/defacto complainant submitted that the defacto complainant is not a known person to the accused; the initial presumption was not rebutted by any contrary proof. The accused did not prove that the cheque was taken away by the defacto complainant without his knowledge. The learned trial Judge and the First Appellate Judge have appreciated the materials on record in a proper perspective and found the accused guilty for the offence under Section 138 of N.I. Act and hence, the revision should be dismissed.

7. Heard the learned counsel for the petitioner/accused, learned counsel for the first respondent/complainant and the learned Government Advocate (Criminal Side) appearing for the second respondent State.

8. Point for consideration :-

Whether the conviction and sentence of the accused for the offence under Section 138 of Negotiable Instruments Act by the learned Judicial Magistrate III based on the materials available on record is fair and proper?

9. The signature in the impugned cheque was not denied by the petitioner/accused. As per Sections 118 and 139 of N.I. Act, once the executant of the cheque admits the execution, it has to be presumed that the cheque has been issued for a legally enforceable debt. The reverse burden is on the petitioner/accused to prove the contrary by any rebuttal proof. In the case in hand, after receiving the statutory notice, the petitioner/accused had sent a reply alleging that he knew the complainant and he requested him to include him as a partner in the building construction business done by the accused. It is further stated that the accused refused to include the defacto complainant as a partner in his business and hence, the complainant had stolen away his cheque from his office during his absence and used the same for the purpose of this case.

10. So the above averments of the reply notice sent by the petitioner/accused would show that the petitioner/accused and the respondent/defacto complainant are not total strangers and they are already known to each other.

11. The contention of the petitioner/accused is that the respondent/defacto complainant intended to share the profits of the building construction business. Because of that alleged motive, the defacto complainant is said to have stolen the cheque of the accused. The accused has not preferred any complaint or taken any action with regard to the missing cheque despite it is not obligatory on the part of the petitioner/

accused to give the rebuttal proof by way of producing independent materials and can expose it from the improbabilities of the respondent/defacto complainant's case.

12. However, when the petitioner/accused takes up a specific defence that the cheque was stolen by the complainant from his office then the same has to be substantiated. Mere self-asserting statements of the accused and the suggestions put to that effect to P.W.1 are not sufficient to prove the alleged act of theft. In the absence of some material proof, it has to be taken that the cheque has been issued only by the petitioner/ accused to the first respondent/defacto complainant.

13. The further submission of the learned counsel for the petitioner/accused is that the first respondent/defacto complainant does not have any financial wherewithals to lend a huge sum of Rs.18,00,000/- and it is also not probable that he could lend the said sum without getting any security. Before exploring the financial capability of the first respondent/ complainant, it is to be noted that the building construction business in which the petitioner/accused is connected, would involve rotation of huge sums of money only.

14. The case of the first respondent/defacto complainant is that the alleged sum of Rs.18,00,000/- was lent by the respondent only for the business purposes of the accused. The complainant has confidently deposed evidence during his cross examination that he has 12 acres of land from which he gets 12 to 13 lakhs of income per year and he also derives income from his occupation as LIC agent. He has also stated that he is cultivating cash crops in his lands and he owns a house. He had also volunteered to produce the relevant documents, if it is called for by the petitioner/accused.

15. However, the petitioner/accused have not opted to call for the documents from the first respondent/defacto complainant. Had the petitioner/accused called for the property-cum-income documents of the respondent and if he failed to produce the same then the accused could have claimed that he had rebutted the initial presumption. The action taken under Section 138 of N.I. Act, is not for recovery of money. It is to punish the defaulting drawers who execute cheques without any intention of honouring it during the business transactions. That is the reason why the reverse burden of disproving the liability on the cheque has to be borne by the accused.

16. The learned trial Judge has observed that P.W.1/ complainant has stated in his evidence that the accused is in the habit of constructing the houses and selling them. The petitioner/accused had agreed to sell one such house to the

defacto complainant also and got an advance amount of Rs.60,000/- and thereafter, he did not complete the transaction.

17. Though this case is not for the relief of specific performance, the above contents were not denied by the petitioner/accused. And the said facts would prove that there were monetary transactions between the petitioner/accused and the defacto complainant.

18. The learned counsel for the petitioner/accused further submitted that the impugned cheque was not used during the year 2010 and hence, the case of the complainant itself is false. The cheque presented in the bank has been returned for the reason of insufficient funds and not on any other grounds.

19. Had the impugned cheque was an invalid one, the written endorsements would have contained the said reason. Even otherwise, it is for the accused to prove that the impugned cheque is an invalid one. The Courts below have rightly dealt with the evidence on records and appreciated the evidence in the right perspective. Since the petitioner/accused did not prove the contrary in order to shift the preponderance of probability in his favour, an initial presumption that was drawn in favour of the respondent/defacto complainant had evolved a conclusive proof. Hence, the judgement of the Appellate Court do not suffer from any factual or legal infirmity so as to warrant my interference.

In the result, this Criminal Revision Case is dismissed and the judgement dated 22.12.2015 passed in C.A.No.16 of 2015 by the learned II Additional District Sessions Judge, Erode, is confirmed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Sessions Judge,
Erode.

2. The Judicial Magistrate No.III,
Erode.

3. The Chief Judicial Magistrate,
   Erode. (For Information)

4. The Public Prosecutor,
   Erode.

5. The Public Prosecutor,
   High Court, Madras.

Copy To:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.1722
+1cc to Mr.K.Karthikeyan, Advocate, S.R.No.1793

Crl.RC.No.122 of 2016

GPL(CO)
PBS/07/02/2022