



BAIL SLIP

The Petitioner/Accused Viz., A.Nagarajan, S/o.Arumuga Gounder was released on Bail as per order of this Court dated 17/11/2016 in Crl.M.P.Nos.12204 & 12279 of 2016 in Crl.R.C.No.1390 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	31.01.2022
PRONOUNCED ON	04.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRIMINAL REVISION CASE NO.1390 OF 2016
AND
CRL.M.P.NOS.12204 & 12279 OF 2016

A.Nagarajan

... Petitioner/Appellant/
Accused

.Vs.

E.Vijayakumar

... Respondent/Respondent/
Complainant

PRAYER:-

This Criminal revision Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the judgement passed in STC No.125/2012 dated 03.10.2013 on the file of the Fast Track Court No. II at Magistrate level, Coimbatore, confirmed in C.A.No.163 of 2013 on 19.08.2016 on the file of the III Additional District & Sessions Judge of Coimbatore.

For Petitioner : M/s.C.Deivasigamani

For Respondent : M/S.Lakshmanasamy



ORDER

This Criminal Revision case has been preferred challenging the judgement of the learned III Additional District & Sessions Judge, Coimbatore, dated 19.08.2016 made in C.A.No.163/2013 which confirmed the judgement of the learned Judicial Magistrate (Fast Track Court) at Magisterial level II, Coimbatore, dated 03.10.2013, made in STC No.125/2012.

2. The Criminal Revision Petitioner was the accused before the trial Court.

3. The case has arisen out of a private complaint made by the respondent/complainant against the accused on the allegation that the accused borrowed a sum of Rs.1,50,000/- from him on 04.12.2009 as hand loan and executed a promissory note on the said day and assured that he would repay the same with interest @ 24 % p.a. on demand; the accused failed to repay when the complainant made demands and finally he gave a cheque for Rs.2,00,000/- drawn at Central Bank of India dated 24.05.2011 towards discharge of the said loan. When the cheque was presented for collection on 27.04.2011 through the respondent's banker, it was returned with an endorsement "today's opening balance insufficient". Hence he gave a legal notice on 10.05.2011. But the notice was returned as 'address wrongly mentioned'. Hence the respondent once again gave another legal notice dated 19.05.2011 and that was returned as 'intimation given'. After complying due legal mandates, the respondent/complainant has filed the private complaint against the accused for punishing him for the offence of dishonour of cheque under Sec.138 r/w 142 of the Negotiable Instruments Act.

3.1. After the case was taken on file and on being satisfied with the materials on record, the accused was questioned. The accused pleaded innocence and claimed to be trial.

3.2. During the course of the trial, on the side of the complainant one witness was examined as PW.1 and 8 documents were marked as Exs.P1 to P8. When the incriminating materials surfaced from the evidence of the complainant was put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the defense, one witness was examined as DW.1 and three documents were marked as Ex.D1 to Ex.D.3.

3.3. After conclusion of the trial and on considering the evidence available on record the learned Trial Judge found the accused guilty for the offence under Sec.138 of the Negotiable Instruments Act and convicted and sentenced him to undergo 4 months Simple Imprisonment and imposed a fine of Rs.1,500/- in default to undergo one month Simple Imprisonment. The appeal



preferred by the accused before the III Additional District and Sessions Judge, Coimbatore in C.A.No.163/2013 was also dismissed on 19.8.2016 by confirming the judgement of the trial Court. Aggrieved over that the present Criminal Revision Petition has been preferred by the accused.

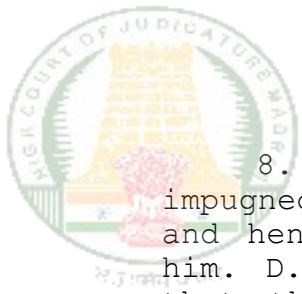
4. Heard, M/s.C.Deivasigamani, learned counsel for the petitioner/accused and M/s.S.Lakshmanasamy, learned counsel for the respondent/complainant.

5. The learned counsel for the revision petitioner submitted that the impugned cheque was not supported by consideration; it is proved through D.W.2/the bank witness that the cheque book which contained the impugned cheque leaf was not received by the petitioner from the Bank; so the cheque book was received by the respondent himself from the bank and had been misused by him for the purpose of this case. Since the second notice sent by the petitioner was returned after giving due intimation to the accused, the mandatory demand was duly made before the complaint was filed; even in the notices, it is seen that the petitioner has stated that after receiving the cheque, the pro note executed by the petitioner was returned; but during the course of the trial the very same pro note has been marked as Ex.P.1; the petitioner denied his very signature on the cheque and hence the petitioner is not entitled to get the initial presumption in his favour; the contradictions in the evidence of the respondent himself would show that the case of the respondent is false; hence the revision should be allowed.

6. The learned counsel for the respondent submitted that it is possible for the petitioner to get the cheque book through some one by sending the request slip attached with the previous cheque book. Even DW.1 Bank witness did not deny the same; banks will not give cheque book of an account holder to anyone without the due authentication given by the account holder; the impugned cheque was returned only for the reason of "insufficient funds" and not for "signature differs"; hence the respondent has proved that the cheque was issued by the petitioner only; the Courts below have rightly appreciated the evidence on record and found the accused guilty and hence it does not require any interference.

7. Point for Consideration:-

"Whether the finding of the guilt of the accused as confirmed by the learned Appellate Judge on the basis of the evidence available on record is fair and proper?"



8. The main contention of the petitioner/accused is that the impugned cheque itself was not received by him from his banker and hence the signature on the cheque also did not belong to him. D.W.1 who is the Bank witness has stated in his evidence that the cheque book was issued only to the account holder. Even if an account holder does not receive the cheque book in person by endorsing his signature on the cheque issue register, he could give due authorization to any person to receive the cheque book on his behalf.

9. It is the evidence of DW.1 that the first cheque book would be given to the account holder directly and thereafter with his request slip (which is found in the cheque book itself) the subsequent cheque book could be issued to any of his representative on his authentication. So in any case the cheque could not have been obtained by the respondent/complainant without the knowledge of the petitioner. The signature affixed in Ex.P.1/cheque is not found to be different from that of the petitioner, by the Bank officials, when the cheque was presented for collection. The cheque was returned only for the reason of 'insufficient finds'. Either before or after the filing of this case, the petitioner had not given any complaint against the Bank that the Bank had issued cheque books for his account to any unauthorized person without the knowledge or authentication of the petitioner.

10. Whenever the drawer of the cheque admits his signature the initial presumption can be drawn in favour of the holder of the cheque that the cheque has been issued for a legally enforceable debt or liability. If the drawer of the cheque denies his very signature, then it is the duty of the holder to prove that the signature on the cheque is affixed by the drawer. It is already observed that the cheque was not returned for the reason 'signature differs'. There was no reason for the bank to collude with the respondent/complainant to return the cheque for 'insufficient funds', even if the signature on the cheque had actually differed. That would show that the cheque has been found to be containing the signature of the petitioner only. Hence, the complainant is entitled to the presumption as to the liability on the cheque.

11. Now the burden would shift on the petitioner to refute that the signature on the cheque was not affixed by him. But the petitioner/accused has not taken any steps to seek the permission of the Court to send the disputed signature along with his admitted signature for scientific examination.

12. It is further submitted by the petitioner that the respondent has stated in his notice that he had returned the promissory note after he received the cheque from him. But



contrary to such contention he has produced the pronote and marked it as Ex.P1. It is not the contention of the petitioner that he had discharged the loan and got back the promissory note as alleged in the notice and Ex.P1 is a forged one.

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13. The petitioner has produced the pronote which is said to have been returned to him. Neither had he taken any steps to get back the cheque by stating that he had got back the promissory note by discharging the loan and the retention of the cheque with the respondent is unnecessary.

14. If the respondent could produce the pronote Ex.P1 despite he stated in his notice that he had returned it to the petitioner, the only presumption in the absence of any allegation of forgery and discharge is that the respondent's allegation about returning of the pronote is a mistaken one.

15. Except highlighting the said mistaken statement shown in the notice of the respondent/complainant the petitioner has not given any other rebuttal proof to show that the cheque was not supported by consideration. The Courts below have rightly appreciated the evidence in a proper perspective by applying the Law of presumption in respect of the Negotiable Instruments and found the accused guilty. Hence I do not find any reason to interference.

In the result the Criminal Revision Case is dismissed and the judgement of the learned III Additional District & Sessions Judge, Coimbatore dated 19.08.2016 made in C.A.No.163/2013 is confirmed. Connected criminal miscellaneous petitions in CrI.MP.Nos.12204 & 12279 of 2016 are also closed.

Sd/-
Assistant Registrar(CS IV)

/True Copy//

Sub Assistant Registrar

jrs

To

1. The III Additional District & Sessions Judge,
Coimbatore.
2. The Judicial Magistrate (Fast Track Court)
at Magisterial level II,
Coimbatore.



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

4. The Record Keeper,
Criminal Section,
High Court, Madras.

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CRL.RC.NO.1390 OF 2016

PL (CO)
PBS/04/04/2022