BAIL SLIP

The Petitioner / Accused V.Varadharajan, Male aged 46 years S/o.Veerasamy was directed to be released on bail vide order dated 29.02.2016 Crl.M.P.No.2309 of 2016 in Crl.R.C.No.343 of 2016 on file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.343 OF 2016

V.Varadharajan ...Petitioner

Vs

K.Ravichandran ...Respondent

PRAYER : This Criminal Revision Case is filed under Section 397 r/w.401 Cr.P.C., against the judgment of the learned II Additional District and Sessions Judge, Tirupur in Crl.A.No.56 of 2015 dated 19.11.2015 confirming the conviction and sentence passed by the learned Judicial Magistrate cum Fast Track Court, Tirupur in C.C.No.57 of 2013 dated 24.04.2015.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.S.Gunalan

O R D E R

This Criminal Revision Case has been challenging the judgment of the learned II Additional District and Sessions Judge, Tirupur dated 19.11.2015 passed in Crl.A.No.56 of 2015, by which the judgment of the learned Judicial Magistrate (Fast Track Court), Tirupur, dated 24.04.2015 made in C.C.No.57 of 2013 was confirmed.

2. The revision petitioner was the 2nd respondent/accused before the trial Court. This case has arisen out of a private complaint made by the respondent/complainant on the basis of the allegations that the complainant is doing real estate business and the 2nd respondent/accused was the proprietor of the 1st respondent's concern which is involved in textile business; the

2nd respondent / accused is known to the complainant for three years; basing on the friendship between the parties, the 2nd respondent / accused approached the complainant for a financial assistance of Rs.4,00,000/-. The respondent/complainant agreed to give Rs.3,50,000/- to the 2nd respondent / accused as loan on 23.08.2011, for the development of the petitioner's business; on receiving the said amount, the 2nd respondent/ accused executed a promissory note in favour of the respondent/complainant and agreed to pay the same an interest at the rate of 12% p.a., but, he did not repay any interest or principal as agreed; since the petitioner/accused has closed his business, the respondent/complainant asked the petitioner/accused to give back his money; the petitioner/accused gave a cheque dated 20.08.2012 for a sum of Rs.3,50,000/- towards discharge of the loan amount availed by him; when the cheque was presented for collection in the Bank, on 21.08.2012 with the respondent's/complainant's bank, it was returned for 'Insufficient Funds'; subsequently, the de-facto complainant issued a statutory pre-litigation notice to the petitioner/accused and after complying the legal mandates, he filed the private complaint against the revision petitioner for punishing him for the offence committed under Section 138 of the Negotiable Instruments Act.

3. After the case was taken on file and on being satisfied with the materials available on record, the accused was questioned. Since the accused pleaded innocence and claimed to be tried, the trial was conducted.

4. During the course of trial, on the side of the complainant two witnesses were examined as PW1 and PW2 and six documents were marked as Exs.P1 to P6. On the side of the defence one witness was examined as DW1 and four documents were marked as Exs.D1 to D4.

5. After conclusion of trial and on considering the evidence available on record, the learned trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him as follows:

Conviction	Sentence
138 of Negotiable Instruments Act	To undergo one year Simple Imprisonment and also imposed a fine of Rs.1000/- and in default to pay a fine of Rs.1000/-, to undergo one month Simple Imprisonment.

6. Aggrieved over that the petitioner/accused preferred an appeal before the II Additional District and Sessions Court, in Crl.A.No.56 of 2015 and the same was also dismissed on

19.11.2015. Aggrieved over that, the revision petitioner/accused has preferred this Revision Case.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

8.The learned counsel for the revision petitioner submitted that the impugned cheque issued by him was not supported by any consideration and the cheque was issued by him only as security for the previous debt of Rs.75,000/- and that had already been repaid by him; but, the respondent/complainant had misused the cheque and managed to file this case; despite the respondent/complainant has stated in his evidence that he had lent a sum of Rs.3,50,000/- for the purpose of giving the accused as loan and the fact was not proved by him; hence, the respondent/complainant is not entitled to carry the initial presumption in his favour.

9. The learned counsel for the respondent/complainant submitted that the revision petitioner / accused had admitted the execution of the cheque and hence, the respondent/complainant is entitled to the initial presumption contemplated under Sections 118 and 139 of Negotiable Instruments Act; the petitioner/accused has not produced any rebuttable proof in order to disprove the initial presumption. The Courts below have correctly appreciated the evidence on record and there is no reason for interference.

10. Point for consideration:

> ''Whether the conviction and sentence of the accused for the offence under Section 138 of the Negotiable Instruments Act, by the learned Sessions Judge, is fair and proper?''

11. The fact that the de-facto complainant and the revision petitioner/accused were known to each other was not denied. The further fact that the petitioner/accused was involved in textile business is also not denied. The impugned cheque dated 23.08.2011 contains the signature of the revision petitioner / accused and the same was not disputed. When the execution of the cheque is admitted, the holder of the cheque is entitled to get the initial presumption that the cheque was issued for legally enforceable debt or liability as contemplated under Sections 118 and 139 of Negotiable Instruments Act. However, the presumption is not conclusive and it is always open to the revision petitioner/accused to rebut the same. In the case in hand, the petitioner / accused has stated that the cheque in question was given to the complainant only by way of security for the past debt of Rs.75,000/- already availed by him. He has further submitted that despite his earlier loan was repaid, the

complainant refused to hand over the cheque and misused the same for the purpose of filing this case. Except the self-assertive statement of the petitioner, no other evidence is produced in this connection to substantiate the above said defence. The petitioner neither produced any document nor has he taken any legal action against the respondent/complainant to get back the cheque.

12. The learned counsel for the petitioner submitted that there are contradictions in the evidence of the complainant/PW1 and Velusamy/PW2, who is said to be the witness for pro-note executed by the accused. The learned counsel for the petitioner drew the attention of the Court to the variation of time of giving the loan in the evidence of PW1 and PW2. It is to be noted that this is not a case for recovery of money based on promissory note. This case is filed under Section 138 of Negotiable Instruments Act. Hence, it is sufficient to see whether the fundamental facts are proved. Since the revision petitioner admitted the execution of the cheque, the respondent/complainant is entitled to get the initial presumption. The reverse burden is only on the revision petitioner/accused to disprove the same by producing any contrary evidence. Despite the revision petitioner/accused had refuted the allegations of the complainant no rebuttal proof is produced.

13. The only defence side witness before the Court is DW1. He is none other than the Manager of the Indian Overseas Bank, where the accused held an account. But, the documents which are marked as Exs.D1 to D4 through DW1 are not in anyway connected to the case of the complainant. The revision petitioner/accused has not taken any steps to prove that the complainant did not have the financial capacity to lend him a loan of Rs.3,50,000/-. The complainant’s account was also not called for to prove anything contrary to the case of the complainant and to substantiate the contention of the accused that the impugned cheque was not supported by consideration. With a mere self-assertive evidence of the accused, it cannot be taken that the preponderance of probability had shifted in favour of the revision petitioner / accused.

14. The learned trial Judge as well as the learned Appellate Judge have appreciated the facts and applied the position of law and found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act. Hence, I do not find any reason for interference.

15. In the result, this Criminal Revision Case is dismissed and the judgment of the learned II Additional District and Sessions Judge, Tirupur, dated 19.11.2015 made in Crl.A.No.56 of

2015 is confirmed. If the petitioner/accused is on bail, the trial Court is directed to issue Non-Bailable Warrant for securing him to undergo the remaining sentence, if any.

Sd/-
Assistant Registrar(CS VII)

// True Copy //

Sub Assistant Registrar

ssn

To

1.The II Additional District and Sessions Judge,
Tirupur.

2.The Judicial Magistrate cum Fast Track Court,
Tirupur.

3.The Chief Judicial Magistrate,
Tirupur.

4.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.A.Ramkumar, Advocate Sr.No.3280

Crl.R.C.No.343 of 2016

MT(CO)
RVM(15/02/2022)