BAIL SLIP

The Petitioner/Accused Viz., K.Suresh Kumar, S/o.Kathirvel be and hereby was directed to be released on bail as per order of this Court dated 28.04.2016 and made in Crl.MP.No.5041 of 2016 in Crl.RC.No.700 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

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

CRL.R.C.NO.700 OF 2016

K.Suresh Kumar

... Petitioner

Vs.

1. V.Boopathi
2. The State Represented by
   The Public Prosecutor,
   Erode.

... Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the order passed by the learned Judicial Magistrate, Fast Track Court-II Erode in S.T.C.No.275 of 2011 dated 10.12.2013 as confirmed by the Judgment of the II Additional District Sessions Judge, Erode in C.A.No.19 of 2014 dated 17.12.2015.

For Petitioner : Mr.T.Gowthaman

For Respondents: Mr.R.Nalliyappan for R1
Mr.A.Gopinath
Government Advocate (Crl. Side) for R2

O R D E R

This Criminal Revision has been preferred challenging the judgment of the learned II Additional District and Sessions Judge, Erode dated 17.12.2015 made in C.A.No.19 of 2014 which confirmed the judgment of the learned Judicial Magistrate, Fast Track Court-II, Erode dated 10.12.2013 made in S.T.C.No.275 of 2012.

2. This case has arisen out of dishonour of cheque issued by the petitioner/accused to the first respondent/complainant. The case of the complainant is that on 26.04.2011, the accused borrowed a sum of Rs.45,000/- from him and in order to discharge the same, he issued a post-dated cheque dated 26.05.2011 for Rs.45,000/-. When the cheque was presented for collection on 26.09.2011, it was returned with an endorsement "Insufficient Funds". After issuing the statutory notice and complying the legal mandates, the first respondent/complainant filed the private complaint against the petitioner/accused for the offence under Section 138 read with 142 of 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 by the trial judge as to the offence committed by him. Since the petitioner/accused pleaded innocence and claimed to be tried, trial was conducted.

4. During the course of trial, on the side of the complainant, he himself was examined as PW1 and 5 documents were marked as Exs.P1 to P5. On the side of the accused, no witness was examined, but one document was marked as Ex.D1.

5. At the conclusion of the 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 to undergo Rigorous Imprisonment for one year and also imposed a fine of Rs.5,000/- in default to undergo Simple Imprisonment for one month. The appeal filed by the accused in C.A.No.19 of 2014 was also dismissed on 17.12.2015 by confirming the judgment of the trial Court. Aggrieved over that, the accused has preferred the present revision.

6. Heard the learned counsel for the Revision petitioner, the learned counsel for the first respondent and the learned Government Advocate (Crl. Side) appearing on behalf of the second respondent. Perused the entire materials available on record.

7. The learned counsel for the revision petitioner submitted that the cheque was not issued for any pre-existing debt; since PW1 had stated in his evidence that the cheque was issued in one and the same day when the loan was disbursed, the cheque could have been issued only for debt and not towards discharge of the loan amount; further the cheque has been filled up by the first respondent/complainant himself and used for the purpose of filing the complaint; the petitioner had stated all these facts in his reply notice, but the Courts below have not considered the above aspects and found the accused guilty.

8. The learned counsel for the first respondent submitted that the petitioner has admitted the issuance of the cheque and there is no dispute with regard to the signature on the cheque; hence, the first respondent is entitled to get the initial presumption under Section 139 of Negotiable Instruments act in his favour; the Courts below have rightly appreciated the evidence and convicted the accused and it does not require any interference.

9. Point for consideration:-

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

10. The fact that the revision petitioner/accused borrowed a sum of Rs.45,000/- from the first respondent/complainant on 26.04.2011 was not disputed. The only contention of the revision petitioner is that he had given the cheque only for the purpose of security for the loan and it cannot be said that the cheque has been issued for any debt or legally enforceable liability. It appears from the evidence of PW1 that the cheque was issued on the same day when he availed the loan amount of Rs.45,000/- from the first respondent/complainant. Though the cheque was issued on the same day, the cheque was dated 26.05.2011.

11. The first respondent/complainant has stated that the revision petitioner has issued only a post dated cheque. But the petitioner states that he had issued only a blank cheque and the particulars of the cheque has been filled up by the first respondent/complainant himself and later he filed this private complaint.

12. As per Section 20 of the Negotiable Instruments Act, when a person signs and delivers a negotiable instrument like a cheque, the bearer of the cheque has got the authority to make it complete for any specified amount. Section 20 of Negotiable Instruments Act is as follows:

> "20. Inchoate stamped instruments.- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in (India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so

signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

13. If the negotiable instruments are stamped ones, then the amount filled in the same should not exceed the amount covered by the stamp. In this case it is seen that the cheque was filled for an amount which did not exceed amount borrowed by the accused from the complainant. Further, the cheque was presented for collection only on 26.09.2011 which was 5 monts after the disbursal of the loan amount. From the very submission of the accused, it is made clear that the cheque was not given as a mere security and it is well supported by a consideration of Rs.45,000/-, which was availed from the complainant as loan. Even it might be true that the cheque was given in one and the same day, but the object of issuing such cheque is to encash it at a later point of time towards discharging the loan, which was already availed by the petitioner/accused. Accordingly, the cheque was presented for collection after five months on 26.09.2011. It is needless to reiterate that the cheque has been issued by the accused only towards discharging the loan amount availed by him.

14. Further, when the execution of the cheque is not denied, the holder of the cheque namely the accused has got the benefit of the statutory initial presumption to be drawn in his favour as per Sections 118 and 139 of Negotiable Instruments Act. It is not the contention of the petitioner/accused that he had already discharged the loan amount; but his contention is that the complainant refused to give back the cheque and misused it. As per the above provisions, the drawer of the cheque is entitled to the initial presumption to the effect that the cheque in question has been given only for the purpose of discharging the debt or legally enforceable liability. However, it is subject to the rebuttal proof if any given by the petitioner/accused to disprove the initial presumption.

15.Admittedly, the revision petitioner did not produce any material to disprove the above initial presumption. In fact he has admitted the borrowing of the loan of Rs.45,000/- from the first respondent/complainant. So it is open to the respondent/complainant to make use of the cheque for the purpose of recovery of the loan amount issued to the accused by way of presenting for collection. The courts below have rightly appreciated the facts and applied the law. Hence, I do not find any reason for interference.

16. In the result, this Criminal Revision is dismissed. The judgment of the learned Principal District-cum-Sessions Judge, Erode made in C.A.No.19 of 2014 dated 17.12.2015 is hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The II Additional District-cum-Sessions Judge,
   Erode.

2. The Judicial Magistrate,
   Fast Track Court-II,
   Erode .

3. The Public Prosecutor,
   High Court of Madras,
   Chennai-104.

4. The Public Prosecutor,
   Erode.

+1cc to Mr.T.Gowthaman, Advocate, S.R.No.3559
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.3583

Crl.R.C.No.700 of 2016

PA(CO)
PM/01/03/2022