



Bail Slip

The Petitioner/Accused namely Govindan Selvaraj, S/o.Govindan, was directed to be released on bail by the order of this Court dated 07.08.2014 and made in Crl.MP.No.1 of 2014 in Crl.R.C.No.767 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 01.02.2022

Order Pronounced on : 09.02.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.767 of 2014

Govindan Selvaraj

.. Petitioner

Versus

1.Pneusmasta Venkata Sathya Surya Subbaraju

2.State rep. By
The Public Prosecutor,
Pondicherry.

.. Respondents

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to revise the order of conviction in S.T.R.No.712 of 2008 on the file of the learned Judicial Magistrate, Yanam and confirm the conviction and sentence under Section 138 of Negotiable Instruments Act passed against the petitioner on 07.06.2014 in C.A.No.31 of 2011 on the file of the learned II Additional District and Sessions Judge at Pondicherry and acquit him.

For Petitioner : Mr.S.Saravanakumar

For R1 : Mr.M.Ravi

For R2 : No Appearance

ORDER

This Criminal Revision Case in Crl.R.C.No.767 of 2014 is filed by the petitioner/accused, aggrieved by the judgment of the learned Judicial Magistrate, Yanam, dated 15.04.2011 in S.T.R.No.712 of 2008, thereby, convicting the petitioner for the



offence under Section 138 of the Negotiable Instruments Act and sentencing to undergo Simple Imprisonment for a period of six months and to pay a compensation of Rs.50,000/- and in default to pay the compensation, to undergo Simple Imprisonment for a period of two months and the judgment of the learned II Additional Sessions Judge at Puducherry, dated 07.06.2014 in CrI.A.No.31 of 2011, thereby, confirming the conviction and sentence of the Trial Court.

2. This is a case arising by way of a private complaint under Section 200 of the Code of Criminal Procedure, whereby, the respondent/complainant filed a private complaint complaining of the offence under Section 138 of the Negotiable Instruments Act stating that the petitioner/accused borrowed a sum of Rs.4,00,000/-, agreeing to repay the same with interest at the rate of 18% per annum and executed a promissory note in favour of the complainant. In repayment of the said amount, issued a cheque bearing No.331547, dated 20.05.2008, drawn on Vijaya Bank, Kakinada and when the same was presented for collection by the complainant with his bankers, namely State Bank of India, Yanam, which was returned dishonoured with an endorsement "insufficient funds" along with memo of dishonour, dated 06.09.2008. The complainant, therefore, issued a statutory notice on 29.09.2018 calling upon the accused to pay the cheque amount within the period of 15 days. However, the petitioner/accused did not pay the amount, but, issued a reply, dated 15.10.2008, for which a rejoinder was also issued on 10.11.2008 and therefore, since the petitioner/accused had committed an offence punishable under Section 138 of the Negotiable Instruments Act, the private complaint was filed.

3. The learned Judicial Magistrate, Yanam recorded the sworn statement of the complainant on 12.11.2018 and thereafter, took cognizance of the case in S.T.R.No.712 of 2008 and issued summons to the accused. Upon appearance of the accused, copies were furnished to him in compliance of Section 207 of the Code of Criminal Procedure and upon questioning, he denied the offence and stood trial. Thereafter, the complainant examined himself as P.W.1 and examined one Palada Veera Venkata Satya Krishna, the Bank Manager of State Bank of India, Yanam as P.W.2 and examined one Dantuluri Vinod Kumar Raju, the scribe of the promissory note as P.W.3. On behalf of the complainant, the promissory note, executed by the petitioner/accused is marked as Ex.P-1; the cheque, issued by the accused, was marked as Ex.P-2; the pay-in slip of the complainant bank was marked as Ex.P-3; the memo of dishonour of the banker of the accused was marked as Ex.P-4; the forwarding memo of the State Bank of India, Kakinada was marked as Ex.P-5; the memo issued by the complainant bank, namely State Bank of India, Yanam was marked as Ex.P-6; the office copy of the legal notice, issued by the complainant was



4. Thereafter, upon being questioned about the adverse evidence and circumstances on record, as per Section 313 of the Code of Criminal Procedure, the accused denied the same. Thereafter, the accused examined himself as D.W.1 and two of his employees, namely Pithani Sathi Babu as D.W.2 and one Dharmaraju Shankar as D.W.3. On behalf of the accused, note book issued by Sri Venkateswara Agency was marked as Ex.D-1 and the photograph showing the shop Venkateswara Agency was marked as Ex.D-2. Thereafter, the Trial Court proceeded to hear the learned Counsel on either sides and by a judgment, dated 15.04.2011 found that the first defence of the accused that the complainant has forged the signature in Exs.P-1 and P-2, but the same is self-contradictory to his own case in the reply notice as well as the chief-examination that empty signed pronotes and the cheque, which is given to the Venkateswara Agency is being misused by the complainant and therefore, rejected the defence of forgery.

6. Aggrieved by the judgment, the complainant filed CrI.A.No.31 of 2011 on the file of the learned II Additional Sessions Judge at Puducherry and by a judgment, dated 09.06.2014, after independently appraising the evidence, the Appellate Court found that there are no irregularities in the matter of presentation of cheque, return, issue of statutory notice and filing of the complaint. The first Appellate Court found that evidence of D.Ws.2 and 3 are interested witnesses because they are working/they worked under D.W.1. The Appellate Court found that it was the burden on the part of the petitioner/accused to prove that the complainant is misusing the cheque which is given as security. The petitioner/accused even after contending that Exs.P-1 and P-2 are forged, did not take



any steps or filed any complaint. Further, the plea of different ink is not sustainable plea and plea of not having legally enforceable debt was not proved by the petitioner/accused and therefore, dismissed the appeal and confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present Revision is laid before this Court.

7. Heard Mr.S.Saravanakumar, learned appearing on behalf of the petitioner/accused and Mr.M.Ravi, learned Counsel appearing on behalf of the respondent.

8. Mr.S.Saravanakumar, learned Counsel for the petitioner/accused, taking this Court through the material evidence on record, firstly would submit that Ex.P-1 promissory note does not satisfy the ingredients as mandated under Section 4 of the Negotiable Instruments Act and therefore, relying upon the judgment of this Court in Crl.R.C.No.1188 of 2014, dated 30.11.2021, contended that the promissory note is not a valid promissory note and therefore, no presumption can be attached to Ex.P-1. The second submission of the learned Counsel for the petitioner is that the finding of the Trial Court that the accused did not take steps for directing the complainant to produce the books of the accounts is falacious, since the complainant, being the party before the Trial Court, inspite of questioning did not produce the books of accounts and hence an adverse inference had to be drawn against him. For the said proposition, the learned Counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court of India in M.S.Narayana Menon @ Mani Vs. State of Kerala¹.

9. The learned Counsel for the petitioner would submit that at the earliest point of time, the petitioner had issued a reply notice stating that the complainant is in the business of selling Prawn foods and medicines. The petitioner/accused is having a Prawn culture farm and therefore, he had a running account with the said Venkateswara Agency in which the complainant is a partner. To prove his plea, he has produced Ex.D-1 note book, issued by the Venkateswara Agency, making entries of all the purchases made and when the petitioner/accused had discharged the entire amount due, it goes without saying that the cheque, which has been given by way of security, has been misused by the complainant.

10. In further support thereof, the complainant was cross-examined in which the complainant has accepted that he was in Prawn culture business also. Even though the complainant further admitted that he has been maintaining the books of accounts in respect of Prawn culture business, he deliberately

¹ (2006) 6 SCC 39



failed and omitted to produce the same. Coupled with the above, the accused, in this case, got into the box as D.W.1 and has deposed about his stand taken in the reply notice. To further corroborate his version, he has also examined D.Ws.2 and 3, the employees who were working at the relevant point of time in his shop, who have also deposed in his favour. Therefore, the accused has raised a probable defence that there is no legally enforceable debt. The burden of proof is only to the degree of preponderance of probability and therefore, when the accused, in the summary trial, has let in evidence of D.Ws.1 to 3, coupled with the reply notice and the answers of the complainant in the cross-examination amounts to the accused rebutting the presumption in favour of the complainant, the Trial Court as well as the first Appellate Court ought to have acquitted the accused.

11. The learned Counsel also would further add that when the complainant was questioned about the income-tax returns, he did not file the same. He would further submit that neither complainant had the capacity nor the accused was in need of Rs.4,00,000/- and therefore, the entire case of the complainant was a false case and was abuse of process of law and therefore, prayed that this Court should interfere in exercise of the powers in the revisional jurisdiction and acquit the petitioner/accused.

12. Per contra, Mr.M.Ravi, the learned Counsel appearing on behalf of the respondent/complainant would submit that apart from the cheque, the complainant has marked Ex.P-1 promissory note. Both Ex.P-1 promissory note and Ex.P-2 cheque are valid negotiable instruments and therefore, presumption under Section 118 of the Negotiable Instruments Act that they were executed for valid consideration arise in favour of the complainant. This apart, the presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant in respect of Ex.P-2 cheque. The contention of the accused in this case that the promissory note is not a valid promissory note is incorrect and the learned Counsel, by producing an English translation of the Ex.P-1, promissory note which is written in Telugu, (there is no dispute as to the correctness of translation) and submit that the same is valid promissory note and merely because the word 'promise' is not contained in the promissory note, that will not, in any manner, render the same as not complying with the ingredients as contained in Section 4 of the Negotiable Instruments Act.

13. The learned Counsel submitted that the only defence raised on merits is that the cheque was issued to one Venkateswara Agency as security and the dues for the said Venkateswara Agency were paid. The complainant has



categorically denied that he has got anything to do with Venkateswara Agency. As a matter of fact, the notebook produced by the petitioner/accused as Ex.D-1, clearly contains the sales tax registration numbers and therefore, the petitioner/accused could have easily ascertained whether the said Venkateswara Agency was either owned by the complainant or whether the complainant is partner of the said agency and produced the same before the Court. When the complainant has clearly denied in his cross-examination that he is totally not connected to Venkateswara agency, then the entire defence raised by the accused regarding the non-existence of legally enforceable debt is unsustainable and therefore, submitted that the Trial Court as well as the first Appellate Court have rightly convicted the petitioner/accused.

14. The learned Counsel also relied on a judgment of the Hon'ble Supreme Court of India reported in Kalamani Tex and Another Vs. P.Balasubramanian², wherein the Hon'ble Supreme Court of India has reiterated in paragraph No.18 about the presumption under Sections 118 and 139 of the Negotiable Instruments Act and laid down that onus was on the accused to meet the standard of preponderance of probability by inspiring confidence of the Court. When the petitioner/accused have failed to do so, he would submit that this Court should dismiss the Revision.

15. I have considered the rival submissions made on behalf of both the sides. I have gone through the complaint and complainant sworn statement and the oral and documentary evidence on record. The following questions arise for consideration in this Revision:-

(i) Whether the Ex.P-1 promissory note is a valid negotiable instrument within the meaning of Section 4 of the Negotiable Instruments Act ?

(ii) Whether the petitioner/accused has rebutted the presumption by letting in evidence to the degree of preponderance of probability ?

Question No.1:

16. Regarding the first question, the following is the English Translation of the Ex.P-1 promissory note:-

" PROMISSORY NOTE

Rs.4,00,000/-

Dt.10.10.2007



WEB COPY

Executed in favour of Venkata Satya Surya Subba Raju, son of Penmatsa Subba Raju, resident of 8-140 5th Cross road, Zicria Nagar, Yanam

Executed by Govindan Selvaraj, son of Govindan, Resident of 3-16-15/2, Santhi Nagar, Kakinada

Purpose for Prawn cultivation investment

I borrowed cash Rs.Four lakhs only from you agreeing to repay the same with interest 1-50 per hundred words One Rupee Fifty paise yearly compound either to you or to your order on your demand at your village and obtain a cancel endorsement on the back of this promissory note. You paid in cash and I received the consideration. This promissory note was written and given with my consent.

Attestors

1.Sd.....

2.Sd..... Rs.1/- Pondicherry
Revenue stamps 1 no

Sd.....

Scribe

Sd....."

17. On a perusal of the same, it would be clear that it mentions the name of the promisor and promisee and it contains amount borrowed and contains statement that the promisor agrees to repay the amount with interest at the rate of Rs.1.50 ps per 100 either to the complainant or his order on demand. Just because the word is 'agreeing to repay', it is the contention of the learned Counsel for the petitioner that it must be "promise to repay". I am unable to agree with the said submission. It is enough the promissory note contained a promise made to the promisee being a certain person or order, by the promisor, to repay a certain sum of money and it is not mandatory that it should be in the exact word 'promise to repay'. In my view, the words 'agree to repay the same with interest' would amount to promise. Therefore, on a perusal of the translation of the promissory note, I am of the view that it is a valid promissory note within the meaning of Section 4 of the Negotiable



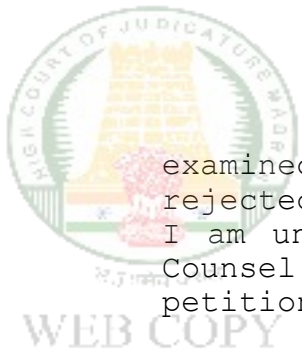
Instruments Act and I reject the contention of the learned Counsel for the petitioner.

18. As far as the judgment relied upon by the learned Counsel for the petitioner that is a case whether in the printed form of promissory note, the name of the promisee itself remains unfilled and blank and therefore, only in that context, when the complainant had not even filled up her name even at the time of filing of the complaint, the question was held in favour of the accused. Therefore, as far as the present promissory note in Ex.P-1 is concerned, it satisfies the ingredients as mentioned in Section 4 of Negotiable Instruments Act and the question is answered accordingly.

Question No.2:

19. Coming to the question as to whether the accused was successful in rebutting the presumption is concerned, it is the case of the accused that the cheque and the promissory note were given in respect of his transaction with one Venkateswara Agency and the debt has been discharged to the Venkateswara Agency and no amount is due. But, however, the complainant, being a partner of the said firm, is misusing the cheque and the promissory note form. The reply notice was denied by the complainant in categorical terms by issuing rejoinder. The complainant in his evidence, has denied that he has got anything to do with the said Venkateswara Agency. His answer in the cross-examination is that he is neither proprietor nor the partner of Venkateswara Agency. On the other hand, the accused is alleging that he is the partner of Venkateswara Agency. Except for the ipse dixit of the accused and his two employees there is no evidence to suggest that the complainant is a partner or proprietor or has any connection with Venkateswara Agency. When the accused has produced Ex.D-1 notebook which contains the sales tax registration numbers, could have easily obtained the names of the owners from the statutory authorities to prove that the complainant is the partner of Venkateswara Agency. So long as the accused is unable to connect the complainant with Venkateswara Agency, all his efforts and his defence that there was a running account with Venkateswara Agency and that there is no amount due and that the cheque and pronote was entrusted with Venkateswara Agency, would go in vain.

20. Therefore, I hold that the petitioner/accused in this case has not done anything to prove the connection of the complainant with Venkateswara Agency. The complainant's name is not there in Ex.D-1 notebook as the proprietor or the partner. It is neither there in the Ex.D-2 photograph. The petitioner/accused has categorically mentioned the name of the employee, who wrote the contents of Ex.D-1. Instead of summoning him and examining as to who was his owner, the accused, who had



examined his own employees and their evidence, has been rightly rejected as interested witnesses by the Trial Court. Therefore, I am unable to agree with the submissions made by the learned Counsel for the petitioner that in this case, the petitioner/accused has rebutted the presumption.

21. The complainant has produced Ex.P-1 promissory note to corroborate his claim of advancing of loan. The signature in Exs.P-1 to P-2 was admitted in the original reply notice. Even in the evidence in chief there was no dispute. Along with the rejoinder, as prayed for by the petitioner/accused, copies of the pronote as well as the cheque was forwarded to the petitioner/accused. The petitioner/accused neither gave any police complaint regarding forgery nor took other steps against the complainant. As a matter of fact, only in the cross-examination in the answer the signature is denied. Therefore, when the signature in Exs.P-1 to P-2 is proved to be that of the accused, the presumption being remaining unrebutted, the Trial Court as well as the first Appellate Court have rightly convicted the accused. As submitted by the the learned Counsel for the complainant, the Hon'ble Supreme Court of India had recently reiterated the law on the subject in the judgment of Kalamani Tex case referred above in paragraph Nos.15 to 18 and therefore, I hold that the petitioner/accused is guilty of the offence under Section 138 of the Negotiable Instruments Act.

22. Coming back to the sentence, the learned Counsel submitted that the petitioner/accused is presently 63 years old and therefore, it would be unduly harsh to send him to jail for a period of six months at this age, when he is already having ailments.

23. Considering the request made by the learned Counsel appearing for the petitioner, the Hon'ble Supreme Court of India in Joseph Moolayil Vs. V.A.Chachko and Another³, had held that imposition of cheque amount as fine and in default to undergo imprisonment is a proper sentence. Therefore, considering the same, I am inclined to modify the sentence imposed by the Trial Court as well as the first Appellate Court from six months to that the petitioner/accused shall pay a fine of Rs.4,05,000/- within three weeks from the date of receipt of the copy of the order. Of the said fine amount, a sum of Rs.4,00,000/- shall be payable as compensation to the complainant and in default of payment of the above said fine amount, the complainant shall undergo Simple Imprisonment for a period of three months.

³ (2006) 9 SCC 165



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24. The Criminal Revision Case is disposed of accordingly.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

grs

To

- 1.The II Additional District and Sessions Judge,
Pondicherry.
- 2.The Judicial Magistrate, Yanam.
- 3.The Public Prosecutor,
Pondicherry.
4. The Chief Judicial Magistrate,
Puducherry(For Information)

Copy To

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

Cr1.R.C.No.767 of 2014

PL(CO)
GMY(07/03/2022)