



Bail Slip

The Petitioner / Accused viz, Gopalakrishnan, S/o.Chandirappa was released on bail as per the Order of this Court dated 14.08.2019 in Crl.M.P.11381 of 2019 in Crl.R.C.No.790 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2022

Pronounced on : 29.04.2022

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.No.790 of 2019

Gopalakrishnan

.... Petitioner / Appellant /
Accused

Vs.

M.Suresh

.... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision filed under Section 397 and 401 of Cr.P.C., praying to call for the records on the file of the learned Additional District and Sessions Judge, Krishnagiri, Krishnagiri District in Crl.A.No.6/2017 dated 20.09.2018, and conforming the judgment passed in S.T.C.No.156/2015 on the file of the learned Judicial Magistrate, Fast Track Court, (Magistrate Level) Hosur, Krishnagiri District, dated 10.05.2016, and set aside the judgment dated 20.09.2018.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.G.M.Anantha Kumar

ORDER

The revision petitioner is an accused in S.T.C.No.156/2015 on the file of Judicial Magistrate, Fast Track Court, (Magistrate Level) Hosur, Krishnagiri District. He was tried for the offence under Section 138 of N.I.Act. The trial Court convicted him for one year simple imprisonment and imposed on him a fine of Rs.2,000/-, and directed that in default, to undergo simple imprisonment for one month, aggrieved by which the revision petitioner moved Crl.A.No.6/2017 before the Additional District and Sessions Court, Krishnagiri. The



appellate Court not only confirmed the conviction and sentence imposed by the trial Court, but also awarded compensation under Section 357(3) Cr.P.C., to the extent of value of the cheque. This is now in challenge.

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2. The case of the complainant/respondent is that on 17.02.2015, he had advanced a sum of Rs.10.0 lakhs, which he claims was paid to the revision petitioner by cash. On the same date, he issued post-dated cheque dated 10.04.2015 (Ext.P1) for the said sum. On the date which the cheque bear, the complainant presented the same for encashment. However, vide Ext.P2, the same came to be dishonoured on 13.04.2014, following which, the complainant issued a statutory notice (Ext.P3) dated 18.04.2014. It evoked no reply and the complaint was promptly laid.

3.1 The learned Magistrate took cognizance of the complaint and issued summons to the revision petitioner. The revision petitioner appeared and denied the allegations made against him, and accordingly, the matter went to trial. During trial, the complainant examined himself as P.W.1. He also examined a certain Venkatesh, his uncle as P.W.2, and had produced Ext.P1 to Ext.P7 documents.

3.2 On appreciating the evidence before it, the trial Court found the accused guilty and convicted him as above. As already indicated, the appellate Court confirmed the same.

4. The learned counsel for the revision petitioner submitted that notwithstanding the fact that the revision petitioner/accused has not examined himself during trial, his line of cross-examination of P.W.1 and P.W.2 has brought forth certain facts which has the potency to rebut the presumption under Section 139 of N.I. Act. He submitted that during the cross-examination of P.W.1, it was elicited that a certain Venkatesh (P.W.2) his uncle, and that the accused and the aforesaid Venkatesh were jointly doing a business, and the said business was closed. It is the line of appellant's case, that the cheque which the accused had given to P.W.2 at the time when the business between them was wound up was misused by P.W.1. And P.W.2 in his cross-examination has blatantly denied that he ever had done any business with the accused. This contradiction between P.W.1 and P.W.2, gives rise to some serious doubts. This makes the accused's theory or rather his defence that the cheque, though was handed over, yet not for discharging the alleged liability vis-a-vis the complainant, but the cheque was issued to P.W.2. He concluded his submissions contending that for rebutting the presumption under Section 139 of N.I. Act, the accused need not enter the witness box, and it is adequate for him to expose the weakness of the complainant's case based on his own evidence.



5. Per contra, the learned counsel for the complainant contended that the scope of revision is narrow, and the Court may not undertake a meticulous analysis of evidence as in an appeal. Admittedly, the accused had handed over the cheque, but to who does the cheque was handed over alone is the dispute. Even going by his theory, if the cheque was issued to P.W.2, there is no reason why P.W.2, who has received the cheque should not keep it with him? Ultimately, when P.W.2 denies any connection to the business, it only implies P.W.2 does not claim any amount worth from the accused. If so viewed, the defence of the revision petitioner hangs in thin air.

6. A holder of a cheque has an advantage under Sec.139 of the N.I. Act as it creates a presumption that the cheque is issued by its drawer for discharging an outstanding liability. The presumption can be rebutted by creating an improbability of the case of the complainant. While the law on this does not require greater degree of exposition, still it needs to be ascertained if the line of argument as has been advanced before this Court is adequate enough to break the presumption which Sec.139 of the N.I Act creates. Secondly, whether the findings of the courts below warrant an interference by this court in exercise of its power of revision.

7. On both the heads this Court's finding is in the negative. The appellant, it must be said, at the best has only proved the fact that he and P.W.2 jointly ran some business, but it stops there. He ought to have provided materials to indicate the circumstances to enable the Court to infer that the appellant possibly have issued the cheque in question to P.W.2. It is the latter limb which is more critical to rebut the presumption under Sec.139 of the N.I Act. And, it is precisely for this reason, the Court cannot interfere with the findings of the Courts below on their pronouncement on the guilt of the appellant.

8 Turning to sentencing, this Court finds that the appellate Court has imposed a compensation of Rs.10,00,000/- under Sec.357 Cr.P.C. Turning to the scheme of Sec.138 of the N.I.Act, besides imposing imprisonment, the Court can only impose fine which may extend up to twice the amount payable under the cheque. It is this amount which is imposed as fine can be directed to be paid as compensation to the complainant under Sec.357 Cr.P.C. See: Somanath Sarkar Vs Utpal Basu Mallick & another [(2013)16 SCC 468]. Therefore, the compensation amounting to Rs.10,00,000/- as was ordered by the appellate court must have to be construed only as part of the fine, but Sec.386 Cr.P.C bars the Sessions Court from enhancing the sentence, which necessarily includes a sentence of fine, while



exercising its appellate power. Therefore, this part of the judgement of the Sessions Court required to be interfered with.

9. In fine, this appeal is partially allowed, and the judgement confirming the conviction is upheld, and the sentence of imprisonment is modified to nine (9) months, and the order awarding compensation of Rs.10,00,000/- by the appellate court is set aside. The learned Judicial Magistrate, Fast Track Court, Hosur is now directed to take steps to secure the presence of the accused, for him to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional District and Sessions Judge
Krishnagiri.
2. The Judicial Magistrate
Fast Track Court (Magistrate Level)
Hosur, Krishnagiri.
3. The Chief Judicial Magistrate,
Krishnagiri. (For Information)
4. The Superintendent
Central Prison, Salem.

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

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.30823

Cr1.R.C.No.790 of 2019

JPL[co]
NSK/23/06/2022