

BAIL SLIP IN CRL.RC.1090/2017

The Petitioners/Accused Viz., (1) S.Sundaram, S/o.Srinivasalu Naidu, male aged 54 years (2) S.Bakyalakshmi, W/o.S.Sundaram, Female aged 51 years were directed to be released on bail vide order dated 17/08/2017 in CrI.M.P.10213 of 2017 in CrI.R.C.No.1090/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2022

PRONOUNCED ON : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1090 of 2017

1.S.Sundaram
2.S.Bakyalakshmi ... Petitioners

Vs.

1.The State Through
Public Prosecutor,
Coimbatore.

2.G.Nagasami ... Respondents

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the issue of the order dated 13.04.2017 in Criminal Appeal No.137 of 2015 by the Hon'ble III Additional District and Sessions Judge, Coimbatore as well the order passed in S.T.C.No.365 of 2011 Judicial Magistrate II, Pollachi and revise the same and thus acquit the petitioners.

For Petitioners : Mr.D.Ashok Kumar

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mr.D.R.Arunkumar

ORDER

The petitioner was convicted by the learned Judicial Magistrate No.II, Pollachi (trial Court), by judgment, dated 25.05.2015 in S.T.C.No.365 of 2011 and sentenced to undergo Simple Imprisonment for a period of one year and to pay Rs.10,00,000/- (Rupees ten lakhs only) as compensation to the 2nd respondent within six months, in default, to undergo Simple Imprisonment for a period of six months for offence under Section 138 of the Negotiable Instruments Act, 1881. As against the judgment of the trial Court, an appeal was preferred by the petitioner before the learned III Additional District and Sessions Judge, Coimbatore (lower appellate Court) in C.A.No.137 of 2015. The lower appellate Court, by judgment, dated 13.04.2017 dismissed the appeal and modified the sentence of the trial Court setting aside the default sentence to be undergone by the petitioner, against which, the present Criminal Revision Case has been filed by the petitioner.

2.The gist of the case is that the petitioners and the 2nd respondent are known to each other for quite some years. On 22.03.2010, the 1st petitioner had borrowed a sum of Rs.10,00,000/- from the 2nd respondent by executing promissory note. In repayment of the loan amount, on 29.10.2010, the 1st petitioner issued a cheque bearing No.811393 drawn on Lakshmi Vilas Bank, Pollachi Branch to the 2nd respondent. When the cheque was presented for collection on 09.12.2010, the same was dishonoured with an endorsement 'Payment Stopped by Drawer' on 18.12.2010. A statutory notice, dated 03.01.2011 was issued demanding the payment of cheque amount given by the 2nd respondent and the same was received by the petitioners on 04.01.2011. The 1st petitioner sent a reply on 18.01.2011 stating that the cheque was missed while travelling in a bus, which was taken by the 2nd respondent's son Kannan and handed over the same to the 2nd respondent, who filled up cheque and misused the same. Since the reply was with a concocted story, the complaint was filed by the 2nd respondent before the trial Court in C.C.No.365 of 2011.

3.During trial, on the side of the complainant/2nd respondent, four witnesses were examined and seven documents were marked. On the side of the accused/petitioners, one witness was examined and two documents were marked. The trial Court after analysing the evidence and materials, convicted the petitioner. The lower appellate Court independently reappraised the evidence and materials, confirmed the conviction of the trial Court modifying the default sentence alone.

4.The learned counsel for the petitioner submitted that in this case, PW1 is the 2nd respondent/complainant and other witnesses PW2 to PW4 are his close friends. The petitioners never borrowed any amount from the 2nd respondent. When the 1st petitioner was travelling in a bus on 06.12.2010 along with the 2nd respondent's son Kannan, he missed the cheque book, which was taken by the said Kannan and handed over the same to his father/2nd respondent. The 2nd respondent filled up the cheque and presented before the bank and filed the complaint before the trial Court. He further submitted that not only the 2nd respondent lodged the complaint against the petitioners, but also his friends viz., Durairaj, A.M.Devaraj and Leelakrishnan foisted false cases against the petitioners. One of the case in C.C.No.39 of 2011 filed by A.M.Devaraj was dismissed as withdrawn on 21.07.2014, on the file of the Judicial Magistrate Court No.II, Udumelpet. He further submitted that the 2nd respondent had no source of income to lend such huge amount of Rs.10,00,000/- to the petitioners. In this case, there is no contemporaneous document to prove that the petitioners availed loan amount of Rs.10,00,000/- from the 2nd respondent. While availing loan from the 2nd respondent, the petitioners handed over a promissory note to the 2nd respondent to return the loan amount within time frame. When the promissory note was attempted to be marked before the trial Court during examination of the witnesses, the trial Court rejected the same, against which, no petition was filed before the higher forum, which is admitted by the 2nd respondent/PW1.

5.It is further case of the petitioners that the date and amount were filled up in the cheque by the 2nd respondent. Though the 2nd respondent claimed that it is a loan on interest, the interest component not calculated and the cheque is only for the loan amount. He further submitted that in the reply notice (Ex.P7), the 1st petitioner gave detailed explanation that the 1st petitioner missed cheque while travelling in a bus, which came in possession of the 2nd respondent's son, who handed over the same to his father/2nd respondent. Taking advantage of the same, the 2nd respondent filled up the cheque and foisted false case against the petitioners. The 1st petitioner gave a public notice for missing of cheque. The 2nd respondent/complainant admitted in his evidence that the other witnesses (PW2 to PW4) are closely known. PW2 to PW4 were unable to give details and particulars with regard to other aspects of the loan transaction between the 2nd respondent and the petitioners.

6.The learned counsel further submitted that the 1st petitioner gave instruction to the Branch Manager, Lakshmi Vilas Bank on 08.12.2010 about missing of his cheque book, which was marked as Ex.D2 during trial. Though PW2 stated that he was present when the loan was availed by the 1st petitioner on 22.10.2010, but he knows nothing as to when the 1st petitioner executed the promissory note. PW3 stated that he wrote the promissory note. PW3 took time to produce the photostat copy of promissory note for the loan amount, which was objected. PW4 stated that he was present on 29.10.2010 when the cheque was handed over to the 2nd respondent. On the side of the defence/petitioners, one defence witness was examined as DW1, the Bank Manager of Lakshmi Vilas Bank, through whom Ex.D1 (Statement of Account) and Ex.D2 (a letter informing the missing of cheque) were marked. The trial Court failed to consider these aspects of the case and merely gone on presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 and convicted the petitioners. The lower appellate Court without independently assessing the evidence and materials, dismissed the appeal confirming the judgment of the trial Court.

7.The learned counsel for the 2nd respondent submitted that the points raised by the learned counsel for the petitioner were raised before the trial Court as well as before the lower appellate Court. Both the Courts below on considering the evidence and materials, rejected the claim and convicted the petitioners by passing well reasoned judgments. The admission of the 1st petitioner that when he was travelling in the bus on 06.12.2010, he missed his cheque book, which later came in possession of the 2nd respondent's son Kannan, who handed over the same to the 2nd respondent, cannot be accepted for the reason that the 1st petitioner in his reply notice (Ex.P7) as well as in the letter given to DW1 (Ex.D2), failed to give details about the bus in which he travelled, from where to where he travelled and on what time, he travelled. Further, the 1st petitioner failed to give reason why all the cheques were signed by him and his wife and he was carrying the cheque book in his pocket while travelling in bus. In Ex.D2, it is stated that the cheque was found missing when he was travelling in the bus on 06.12.2010, nothing more. Despite knowing that the cheque book came in possession of the 2nd respondent's son Kannan, no Police complaint was lodged by the 1st petitioner and no reason given for the same. The 1st petitioner would be the right person to get into the box and examine himself as defence witness and give explanation for all these facts now alleged by him. Strangely for the reasons best known, he failed to examine himself as defence witness.

Merely by sending a reply notice (Ex.D2) would not probablize the defence. Though a point was raised that photostat copy of the promissory note was attempted to be marked on the side of PW1/2nd respondent, the petitioners have not stated anything with regard to the falsity of the promissory note. The petitioners except for repeating the earlier defence, they are unable to produce any material in support of their contention.

8.The learned counsel for the 2nd respondent relied on the decision of the Hon'ble Apex Court in the case of "Bir Singh Versus Mukesh Kumar reported in MANU/SC/0154/2019" wherein the Hon'ble Apex Court relying on various judgments, had held that the blank cheques is a valuable instrument under Section 20 of the Negotiable Instruments Act, 1881 and presumption under Section 139 of the Negotiable Instruments Act, 1881 would get attracted. In this case, there are overwhelming evidence against the petitioners. Hence, he prayed for dismissal of the above revision confirming the judgments of the Courts below.

9.This Court considered the rival submissions and perused the materials available on record.

10.The case of the 1st petitioner is that on 06.12.2010, he kept the signed blank cheques in his pocket while travelling in the bus. At that time, the 2nd respondent's son Kannan also travelled in the same bus. During that time, the 1st petitioner missed the cheque book. But he failed to produce any witness or document about the bus, in which he travelled and from where to where he travelled and at the time of travelling. It is also to be seen that the 1st petitioner failed to take any step to lodge a Police complaint for missing of his cheque book, more so, after receipt of the statutory notice. In the reply notice (Ex.D7), though the 1st petitioner stated about the 2nd respondent's son Kannan came in possession of his cheque, no action taken against him by the 1st petitioner. From Ex.D7, the 1st petitioner admitted that the petitioners and the said Kannan were doing business jointly together and later, due to some difference of opinion, they stopped their business and in order to extract money, the cheque was misused by the 2nd respondent. This contention was not put during cross examination of PW1/2nd respondent. The petitioners have not given any reason while questioning under Section 313 Cr.P.C.

11.In this case, the 1st petitioner would have been the right person to give explanation about the facts of the case by examining himself as defence witness, but he failed to do so.

12. On perusal of the evidence and materials and also the judgment of the Courts below, the petitioners have not made out a case and probablized their defence. The presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 is starring against the petitioners. The points now raised before this Court, are already raised before the trial Court and the lower appellate Court, which are dealt and discussed in elaborate.

13. Thus, the trial Court on appreciation of evidence and materials, had rightly convicted the petitioners. The Lower Appellate Court, being a fact finding Court has correctly re-appreciated the entire evidence and materials and confirmed the judgment of the trial Court.

14. It is well settled that the scope of the criminal revision is very limited, unless there is any illegality or any perversity in the appreciation of evidence by the Courts below.

15. On reading of the entire materials, this Court does not find any illegality or perversity or infirmity in the judgments of the trial Court and the lower appellate Court and the same are, hereby, confirmed.

16. In the light of the above discussion, the criminal revision is not sustainable and, is liable to be dismissed and accordingly, dismissed.

17. The trial Court is directed to secure the petitioners for sufferance of the remaining period of their sentence, if they are outside.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

vv2

To

1. The III Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate Court No.II,
Pollachi.

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

4.The States Through
Public Prosecutor,
Coimbatore.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Ashok Kumar, Advocate SR.No.17678

+1cc to Mr.D.R.Arun Kumar, Advocate SR.No.17970

Crl.R.C.No.1090 of 2017

PMK(CO)
CB(25/03/2022)