BAIL SLIP

The accused namely M.V.S.Rajendranath, was released on bail in CRL.M.P.No.10673 of 2017 dated 24/08/2017 in CRL.R.C.No.1125 of 2017 against the conviction passed by the learned XV Additional Sessions Judge, Chennai in C.A.No.9 of 2017 dated 11/08/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2022

PRONOUNCED ON : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.1125 OF 2017
AND
CRL.M.P.NO.689 OF 2018

M.V.S.Rajendranath,
Proprietor M/s.TAED Vision,
No.16, S1, Selvameena Apartments,
2nd Floor, Loganathan Nagar, 1st Street,
Choolaimedu, Chennai - 600 094.

... Petitioner/Accused

Vs.

M/s.Raj Television Network Ltd.,
Rep by its Admin Manager Mr.Suresh,
No.32, Poes Road, 2nd Street,
Teynampet, Chennai - 600 018.

... Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the learned XV Additional Sessions Judge, Chennai in C.A.No.9 of 2017 dated 11.08.2017 and confirm the trial Court order by the learned Metropolitan Magistrate Court, Fast Track Court - III, Saidapet, Chennai in C.C.No.11901 of 2009.

For Petitioner : Mr.V.T.Balaji

For Respondent : Mr.K.Venkateswaran for
Mr.P.K.Srinivasan

ORDER

The petitioner/accused was acquitted by the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai (trial Court), vide judgment, dated 09.08.2016 in C.C.No.11901 of 2009. Against the judgment of acquittal, dated 09.08.2016, the respondent/complainant preferred an appeal before the learned XV Additional Sessions Judge, Chennai (lower appellate Court) in C.A.No.9 of 2017. The lower appellate Court, by judgment, dated 11.08.2017 set aside the judgment of the trial Court, dated 09.08.2016 in C.C.No.11901 of 2009 and convicted the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo six months Simple Imprisonment and to pay a sum of Rs.1,13,500/- towards compensation to the respondent, in default, to undergo three months Simple Imprisonment. As against the judgment of conviction and sentence, the present Criminal Revision has been filed by the petitioner/accused.

2.The gist of the case is that the respondent engaged in the business of Satellite Television Broadcast and they broadcast various programs and also cinematography films in Tamil language. The main source of revenue for the respondent is through telecasting serials, advertisements, hiring slots to develop their business and from the cable operators. The petitioner hired slots for developing his business. During the course of the above said business, the petitioner issued a cheque (Ex.P2) bearing No.519210, dated 21.09.2008 for Rs.1,13,500/-, drawn on Indian Bank, South Usman Road, Branch, Chennai. When the cheque was presented for encashment in Canara Bank, Teynampet Branch, the same was returned with an endorsement 'Insufficient Fund' through the return memo, dated 04.02.2009. Thereafter, the respondent issued a statutory notice (Ex.P5), dated 13.02.2009 calling the petitioner to pay the entire cheque amount within 15 days from the date of receipt of notice. But the petitioner neither paid the cheque amount, nor made any reply to the respondent. Hence, he filed a complaint before the trial Court in C.C.No.11091 of 2016. After ful-fledged trial, the petitioner was acquitted. On appeal by the respondent, the petitioner was convicted as stated above.

3.During trial, on the side of the respondent, one Suresh was examined as PW1 and six documents were marked as Exs.P1 to P6. On the side of the defence, no witness was examined and no document was marked.

4.The learned counsel for the petitioner submitted that on behalf of the respondent, one Suresh was examined as PW1 during trial, who was employed under the respondent. Though initially

PW1 stated that he was aware about the transaction between the petitioner and the respondent and entire facts of the case, later he admitted that he is not aware about what is the time of slots and who is the person hired slots and the person who participated in the programme and its details. He further submitted that PW1 is unable to produce any document pertaining to the transaction took place between the petitioner and the respondent. PW1 categorically stated that it is one Ravi, the Director of the respondent company, who would be aware of all the particulars and the transaction. Despite the same, the respondent failed to examine the said Ravi as witness during trial. Finding that the respondent is unable to give any particulars about the transaction between the petitioner and the respondent and liability, the trial Court acquitted the the petitioner vide judgment, dated 09.08.2016.

5.The learned counsel further submitted the petitioner was having a business with the respondent earlier, at that time, the petitioner gave cheque (Ex.P2) as security, which was misused by the respondent. As regards the earlier programme, the said programme was directly handled by Ravi for hiring slots. PW1 admitted that the said Ravi was one of the Director of the respondent company, who was incharge of the transaction of respondent company. But, in this case, the said Ravi not entered the box and not clarified or confirmed the transaction between the petitioner and the respondent. Mere possession of cheque, which was given for earlier transaction, cannot be construed as cheque issued for discharge of the present liability. The trial Court rightly relied on the decision of the Hon'ble Apex Court in the case of "Rangappa Versus Sri Mohan reported in 2010 (11) SCC 441" acquitted the petitioner/accused. The lower appellate Court proceeded on a wrong premise since the signature in the cheque was not denied, the presumption under Section 139 of the Negotiable Instruments Act would come into play and hence, rendered the judgment of conviction. The lower appellate Court failed to consider that the presumption under section 139 of the Negotiable Instruments Act, is a rebuttal one. In this case, by cross examination of the respondent, the petitioner disputed the liability and gave explanation for handing the cheque, which was given earlier as security for some other programme. It is for the respondent to adduce evidence to prove that the cheque (Ex.P2) was issued by the petitioner in discharge of subsisting liability. Further, the lower appellate Court failed to consider that the cross examination of PW1 was not completed, since PW1 failed to appear for further cross examination and also failed to give explanation and adduce evidence. Hence, he prayed for setting aside the judgment of the lower appellate Court and confirming the judgment of the trial Court.

6.The learned counsel for the respondent submitted that the petitioner not denied the issuance of cheque (Ex.P2) and his signature. In this case, the petitioner failed to enter into the box, give explanation in this regard. It was not even suggested to PW1 that there is no transaction and the earlier liability was discharged by the petitioner. Further, the petitioner has not produced any evidence to show how he discharged the earlier liability and has no due with the respondent. The statutory notice, dated 13.02.2009 (Ex.P5) was returned, no reply was given. On the other hand, for the first time, during cross examination, such defence made by the petitioner. The trial Court on the wrong premise, acquitted the petitioner. The lower appellate Court finding that the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 not discharged, rightly convicted the petitioner. The petitioner even today not produced any material to show that the liability was discharged. Hence, he prayed for dismissal of this Criminal Revision confirming the judgment of the lower appellate Court.

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

8.The complaint was lodged by one Kishore Kumar, Legal Officer of the respondent company. During trial, another employee from the respondent company viz., Suresh entered into the box and examined himself as PW1. In his evidence, he stated about the issuance of cheque (Ex.P2) and dishonour of the same. But he is unable to give any answer with regard to issuance of cheque (Ex.P2), dishonour of the cheque, issuance of statutory notice (Ex.P5). PW1 not able to give details of transaction. On the other hand, he categorically confirmed that it is only Ravi, Director of the respondent company, would be the right person to give answer for the cheque and its liability. But, in this case, the said Ravi not examined as witness by the respondent company.

9.It is not necessary, in each case, the accused has to get into the box under Section 315 Cr.P.C., and give explanation. From the available materials and by way of cross examination, the accused is only to probablize his defence and disprove his liability. In this case, the petitioner had rebutted by raising probable defence about the existence of a legally enforceable debt or liability. The same was rightly considered by the trial Court in its judgment, dated 09.08.2016 and the same is hereby confirmed.

10.The lower appellate Court finding that the presumption under section 139 of the Negotiable Instruments Act, not rebutted, wrongly convicted and sentenced the petitioner, which needs interference of this Court. Hence, the judgment of the lower appellate Court in C.A.No.9 of 2017, dated 11.08.2017 is set aside. The petitioner is acquitted of all charges framed against him. Hence, this Criminal Revision Case is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The XV Additional Sessions Court,
   Chennai.

2. The Metropolitan Magistrate Court,
   Fast Track Court - III,
   Saidapet, Chennai.

3. The Chief Metropolitan Magistrate,
   Egmore, Chennai.

Copy To

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

+1cc to Mr.K.Venkateswaran, Advocate, S.R.No.30824

+1cc to Mr.V.T.Balaji, Advocate, S.R.No.30151

RK(CO)
RLP(11/05/2022)