



BAIL SLIP

The Appellant/Namely K.S.Mahadevan, S/o.Subramaniam accused in STC.No.184/2014 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode was directed to be released on bail as per order dated 11.04.2017 in Crl.MP.4904 of 2017 in Crl.RC.552 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.552 OF 2017

K.S.Mahadevan

... Petitioner/
Accused

Vs

M.Balasubramaniam

... Respondent/
Complainant

PRAYER:

This Criminal Revision Case is filed under Section 397 and r/w.401 Cr.P.C., against the judgment of the learned I Additional District and Sessions Judge, Erode, dated 14.03.2017 made in Crl.A.No.105 of 2016, confirming the judgment of the learned Judicial Magistrate, Fast Track Court No.II, Erode dated 21.04.2016 made in S.T.C.No.184 of 2014.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.V.Raghunathan

O R D E R

This Criminal Revision Case has been preferred, challenging the judgment of the learned I Additional District and Sessions Judge, Erode, dated 14.03.2017 made in Crl.A.No.105 of 2016, confirming the judgment of the learned Judicial Magistrate, Fast Track Court No.II, Erode dated 21.04.2016 made in S.T.C.No.184 of 2014.



2. This case arises out of a private complaint made by the respondent/complainant on the allegation that, on 20.10.2013, the petitioner had availed a loan of Rs.4,50,000/- and he also issued post dated cheque dated 21.12.2013 towards discharge of the said amount. When the cheque was presented for collection on 23.12.2013, it was returned with an endorsement "for want of sufficient funds". After issuing mandatory legal notice and after complying with all legal mandates, the respondent/complainant has preferred the complaint against the petitioner for punishing him for the offence under Section 138 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. Since the accused pleaded innocence and claimed to be tried, the trial was conducted.

4. During the course of trial, on the side of the complainant, one witness was examined as PW1 and 11 Documents were marked as Exs.P1 to P11. On the side of defence, two witnesses were examined as DW1 and DW2 and two documents were marked as Exs.D1 and D2.

5. After completion of trial and on considering both oral and documentary evidence adduced on the side of the complainant and on the side of the defence, the learned trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him as follows:

Conviction	Sentence
Section 138 of the Negotiable Instruments Act.	To undergo one year Simple Imprisonment and also imposed a fine of Rs.5000/- and in default, to undergo one month Simple Imprisonment.

6. Aggrieved by the same, the petitioner/accused preferred an appeal before the learned I Additional District and Sessions Judge, Erode, in CrI.A.No.105 of 2016 and the same was also dismissed, confirming the judgment of the trial Court. Aggrieved by the same, the revision petitioner/accused has preferred this Revision Case.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

8. The learned counsel for the petitioner submitted that the impugned cheque was issued by the petitioner only by way of



security for an earlier loan availed by the petitioner's wife's brother; despite the loan was repaid to the respondent/complainant, the cheque was not returned and it was misused by the respondent for the purpose of this case. The learned trial Judge as well as the learned Appellate Judge did not appreciate the evidence in a proper perspective and arrived at a conclusion that the cheque was not supported by consideration. The petitioner had examined his wife's brother as a witness and he had stated in his evidence about the issuance of cheque to the respondent/complainant as a security for his earlier loan. Since the Courts below have over looked the above important evidence, the judgment of the Courts below should be reversed.

9. The learned counsel for the respondent/complainant submitted that once the execution of the cheque was admitted by the petitioner, the initial presumption will go in favour of the respondent/complainant. The alleged earlier loan transaction between the petitioner's wife's brother and the complainant has got nothing to do with the impugned transaction. Only because the petitioner failed to rebut the initial presumption, the learned trial Judge had found the accused guilty for the offence under Section 138 of Negotiable Instruments Act. The learned appellate Judge has rightly upheld the judgment of the trial Court by properly evaluating the evidence available on record. Hence, it does not warrant any interference by this Court.

10. Point for consideration:

'Whether the conviction and sentence of the accused for the offence under Section 138 of the Negotiable Instruments Act, by the learned Sessions Judge, is fair and proper?'

11. The simple defence of the petitioner/accused in this case is that the impugned cheque has been issued only as a security and it is not supported by any consideration. However, the execution of cheque was not denied. In such circumstances, the holder of the cheque, namely, the respondent/complainant is entitled for getting an initial presumption in his favour that the cheque has been executed for a legally enforceable debt or liability as prescribed under Section 118 read with Section 139 of the Negotiable Instruments Act. Despite the initial presumption lies in favour of the complainant, it is always open to the petitioner to rebut the same by bringing out the preponderance of probability in his favour.

12. The petitioner has submitted that the cheque in question was issued only by his wife's brother one Ganesan, in connection with his earlier loan transaction that he had with the respondent/complainant. It is further submitted that since the



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said Ganesan could not repay the loan amount, he entered into a sale transaction of his property with the respondent/complainant and completed the sale. Even after that, the respondent/complainant refused to hand over the cheque and misused it for the purpose of this case. In order to substantiate the above contentions, on the side of the defence, the said Ganesan was examined as DW1. He also produced the sale deed-Ex.D1, executed by him in favour of the respondent/complainant. The recitals of Ex.D1 do not disclose anything about the alleged earlier loan availed from the respondent/complainant. The trial Court has also adverted about the same and observed that the recitals of the sale deed do not mention anything about the alleged loan transaction or that the sale consideration was appropriated for discharging the previous loan. It is to be noted that, despite the sale was executed no step was taken by DW1 to get back the cheque from the complainant. The petitioner/accused who has got the burden to demolish the initial presumption by shifting preponderance of probability in his favour ought to have shown the steps he had taken to get back the cheque after executing the sale deed.

13. In the case on hand, the evidence on record would show that the petitioner/accused had failed to discharge his reverse burden. Under such circumstances, it is right for the Courts below to record a finding that the petitioner/accused is guilty for the offence under Section 138 of Negotiable Instruments Act, which, in my opinion, does not suffer from any factual or legal infirmity and hence there is no reason for interference by this Court.

14. It is seen that the petitioner/accused was convicted and sentenced to undergo one year Simple Imprisonment. The learned counsel for the petitioner submitted that the sentence is too high and some leniency should be shown to him.

15. Considering the submissions made by the learned counsel for the petitioner and also taking into account of the circumstances of the case, I feel that the sentence should be reduced from one Year Simple Imprisonment to Six months Simple Imprisonment.

16. In the result, this Criminal Revision Case is partly allowed and (i) the judgment of the learned I Additional District and Sessions Judge, Erode is modified to the effect that sentence is reduced from one Year Simple Imprisonment to Six months Simple Imprisonment.

(ii) The sentence of imprisonment if any already undergone by him, shall be set off under Section 428 Cr.P.C.



(iii) Since the petitioner/accused is on bail, pending Cr1.R.C., the trial Court is directed to issue Non-Bailable Warrant for securing him to undergo the remaining sentence, if any.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,
Erode.
2. The Judicial Magistrate, Fast Track Court No.II,
Erode.
3. The Chief Judicial Magistrate,
Erode. (For information)
4. The Public Prosecutor,
High Court of Madras,
Chennai.
5. The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.4353
+1cc to Mr.V.Raghunathan, Advocate, S.R.No.3874

Cr1.R.C.No.552 of 2017

SSI (CO)
PM/07/03/2022