BAIL SLIP

The Petitioner herein/Accused namely A.T.Ansari, S/o.Ahamed Moideen (in C.C.No.312 of 2014 (Old STC.No.185 of 2009) on the file of the Judicial Magistrate, FTC.1, Magisterial Level, Coimbatore) was directed to be released on bail by order of this Court dated 20/06/2017, and made in Crl.M.P.No.5873 of 2017 and 7521 of 2017 in Crl.R.C.No.648 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.648 OF 2017

A.T.Ansari ... Petitioner/Accused

Versus

1. K.G.Gopinathan

2. L.G.Gopinathan
   The Inspector of Police,
   B1, Bazhaar Station,
   Coimbatore City. ... Respondents

   (R2 suo-motu impleaded as per order in Crl.R.C.No.648 of 2017 dated 11.03.2022)

PRAYER:-

Criminal Revision petition filed under Section 397 and 401 Cr.P.C. praying to call for the records and set aside the conviction order passed by the learned I Additional District and Sessions Judge at Coimbatore in C.A.No.72 of 2016 dated 24.03.2017, confirming the order of conviction passed by the learned Judicial Magistrate, Fast Track Court-I at Magisterial Level, Coimbatore in C.C.No.312 of 2014 (Old STC No.185 of 2009) dated 25.04.2016.

For Petitioner : Mr.Naveen Kumar Murthi
Legal Aid Counsel

For Respondent-1 : Mr.K.Sudhakar
Legal Aid Counsel

For Respondent-2 : Mr.A.Damodaran
Additional Public Prosecutor

O R D E R

This Criminal Revision Case has been filed to set aside the conviction order passed by the learned I Additional District and Sessions Judge at Coimbatore in Crl.A.No.72 of 2016 dated 24.03.2017, confirming the order of conviction passed by the learned Judicial Magistrate, Fast Track Court-I at Magisterial Level, Coimbatore in C.C.No.312 of 2014 (Old STC No.185 of 2009) dated 25.04.2016.

2. The petitioner/accused was convicted by the learned Judicial Magistrate, Fast Track Court-I at Magisterial Level, Coimbatore on the complaint filed by the first respondent under Section 138 of the Negotiable Instruments Act in C.C.No.312 of 2014 by judgment dated 25.04.2016 and sentenced to undergo six months simple imprisonment and to pay the cheque amount of Rs.2,50,000/- as compensation to the complainant/first respondent. Aggrieved by the same, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Coimbatore in Crl.A.No.72 of 2016. The learned Sessions Judge, by judgment dated 24.03.2017, dismissed the appeal confirming the conviction order passed by the trial Court, as against which, the present revision has been filed by the petitioner/accused.

3. The contention of the petitioner is that the cheque-Ex.P2 was not given for discharge of any liability. The petitioner had never taken any loan from the first respondent. The first respondent was earlier running a chit fund finance company. The petitioner subscribed for the chit in the year 2005. At that time, he handed over the signed blank cheque and pro-note as security, which is the normal practice followed in the private chit fund. To prove the same, the petitioner examined himself as D.W.1 and examined one V.Subramanian, Manager, UCO Bank as D.W.2. The petitioner denies the writings in the cheque. The first respondent/complainant in his evidence admits that there is a variation in the ink colour of the signature and the writings in the cheque/Ex.P2. The pro-note/Ex.P1 was also marked on objection. Exs.P1 and P2 were handed over in blank by the petitioner. The subscription of the petitioner to the chit run by the first respondent, is also admitted. The first respondent was running a chit fund in the name and style of M/s.Praveenath Chits. The revision petitioner

joined the chit in the year 2003. At that time, the first respondent received one signed pro-note and blank cheque from the petitioner for safety and security purpose. The Bank Manager/D.W.2 confirms that the Account Opening Form, Specimen Signature Card and Revised Signature Card of the petitioner were not available in the Bank. But he had produced the Specimen Signature Card with regard to the another account of the petitioner, which was marked as Ex.D4.

4. Both the Courts below failed to consider the evidence and materials, on the other hand, it was merely held that the signature has not been denied, hence statutory presumption under Section 139 gets attracted and accordingly the petitioner was convicted. The learned counsel for the petitioner further relied upon a decision of the Hon'ble Supreme Court in the case of Basalingappa Vs. Mudibasappa, reported in (2019) 5 SCC 418, wherein, the Hon'ble Apex Court had summarized the principles enumerated by the Apex Court with regard to Sections 118(a) and 139 of the Negotiable Instruments Act, as below:

> "25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
>
> 25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebuttting the presumption is that of preponderance of probabilities.
>
> 25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
>
> 25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
>
> 25.5. It is not necessary for the accused to come in the witness box to support his defence."

5. Further, in this case, P.W.1 had given contradictory version with regard to the modus of handing over of the loan and he is unable to give the date, time, place and other particulars. The Lower Appellate Court mechanically dismissed the appeal, without independently considering the evidence and materials. In such circumstances, there is perversity in the judgment rendered by the Lower Appellate Court. The Hon'ble Supreme Court in the case of Gamini Bala Koteswara Rao Vs. State of Andhra Pradesh reported in (2009) 10 SCC 636 had clearly held that the word "perverse" in terms as understood in law, has been defined to mean "against the weight of evidence". In this case, the evidence had not been properly considered. In view of the above decisions, the judgment of the Courts below may be interfered with by setting aside the same.

6. The learned counsel appearing for the first respondent/ complainant submitted that, in this case, the petitioner had not denied the signature in the cheque. The petitioner though admits that the cheque and pro-note were handed over to him, the same do not create a defence as though petitioner subscribed to a chit with the first respondent in the year 2003, at that time, signed blank cheque and pro-note were handed over, which is now misused, presented for collection and got dis-honoured. Nowhere petitioner stated as to what steps, he had taken to get back his cheque and pro-note. After dis-honour of the cheque, such plea is now made, which clearly shows that it is a defence theory propounded to escape from the case. Further, the petitioner failed to produce any material to show that the payments have been made to the first respondent/complainant. The petitioner though got into the box as D.W.1, marked Exs.D1 to D3, he failed to prove the discharge of liability, further nothing could be brought during the cross examination of P.W.1. The Branch Manager, UCO Bank examined as D.W.2 and Specimen Signature Card with regard to the another account of the petitioner, marked as Ex.D4. The specimen signature in the card and signature in the cheque/Ex.P2 are identical. Hence, the signature proved. Further, no material produced and no cross examination made to show that the amount covered by the cheque, paid and discharged. He further relied on a decision of the Hon'ble Supreme Court in the case of State of Maharashtra and Others Vs. Jagmohan Singh Kuldip Singh Anand and Others, reported in CDJ 2004 SC 988, for the proposition that the High Court can review the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate Courts and that the finding of fact was not unreasonable or perverse. Further, this Court in Crl.R.C.No.1096 of 2013 in the case of Sathish Kumar Vs. Vidhyasagar, reported in 2021(2) MWN (Cr.) DCC 11 (Mad.) had followed the said decision of the Apex Court.

7. Considering the submissions made on either side and on a perusal of the materials on record, it is not in dispute that the petitioner/accused had handed over the signed cheque/Ex.P2 to the first respondent. According to the petitioner during the year, 1995, the first respondent was running a chit business in the name of M/s.Praveenath Chits. The first respondent/P.W.1/ complainant admitted that from the year 1995 to 2009, he had been running the business, which is proved by Ex.D1. The petitioner had subscribed to the chit. To prove the fact marked Ex.D2/Chit Fund Pass Book. The first respondent/P.W.1 admit that it is the usual practice that, while running a chit fund, unfilled signed cheques will be obtained in the course of the chit business. He admits that the ink colour of the signature in the cheque differs from the ink colour of the writings in the cheque. The first respondent not given reason in the statutory notice or in the complaint about the discrepancies or in his cross examination he gives explanation. The petitioner had probablised his defence, who got into the box, gave explanation as to how the signed cheques, landed in the hands of the first respondent. The first respondent unable to make discredit the evidence of the petitioner while cross examining him.

8. On a perusal of the judgment of the Courts below, it is seen that primarily on the presumption under Sections 118(a) and 139 of the Negotiable Instruments Act, the Courts below have convicted the petitioner, glossing over the other evidence.

9. Further, the Hon'ble Apex Court in a case of Basalingappa Vs. Mudibasappa (supra) had clearly given guidelines, as well as in the case of Rangappa Vs. Sri Mohan, and held that the statutory presumption is rebuttable, which can be either from the cross examination of the witnesses or the accused getting into the box and giving his explanation. In this case, the petitioner had got into the box, gave his explanation about the handing over of the cheque and questioned the difference in ink. Both the Courts below failed to analyse the evidence on the contrary proceeded merely on presumption and convicted the petitioner.

10. In view of the above, this Court finds that the petitioner had probablised his defence, gave proper explanation. The Courts below failed to analyse the evidence, weigh the materials, consider the explanation given, on the other hand primarily on the presumption convicted the petitioner, failing to look into the fact that the petitioner has probablised his defence. In view of the same, this Court is inclined to set aside the conviction and sentence passed by the trial Court.

11. In the result, this Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the learned

I Additional District and Sessions Judge at Coimbatore in Crl.A.No.72 of 2016 dated 24.03.2017, confirming the order of conviction passed by the learned Judicial Magistrate, Fast Track Court-I at Magisterial Level, Coimbatore in C.C.No.312 of 2014 (Old STC No.185 of 2009) dated 25.04.2016 are set aside and the revision petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rsi

To

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

2. The Judicial Magistrate,
   The Fast Track Court-I at Magisterial Level,
   Coimbatore.

3. The Inspector of Police,
   B1-Bazaar Station,
   Coimbatore City.

4. The Public Prosecutor,
   High Court, Madras.

Copy To:-

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

CRL.R.C.NO.648 OF 2017

SV(CO)
PBS/30/05/2022