



Bail Slip

The Appellant/Accused namely S.A.Mohammed Haneefa S/o.Abubakar, aged about 48 years, was directed to release on bail as per order of this Court dated 31.07.2017 and made in CrI.M.P.No.8837 of 2017 in CrI.RC.No.942 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.942 of 2017

S.A.Mohammed Haneefa

... Petitioner

Vs.

R.Swaminathan

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order of conviction dated 21.12.2016 passed in C.A.No.13 of 2016 by the District and Sessions Judge, Tiruvallur in partly allowing the Appeal by modifying the order of conviction dated 07.01.2016 in S.T.C.No.619 of 2014 passed by the Fast Track Court at Ambattur.

For Petitioner : No representation

For Respondent : No representation

ORDER

The petitioner/accused in S.T.C.No.619 of 2014 for the offence under Section 138 of the Negotiable Instruments Act, on the complaint by the respondent was convicted by the learned Judicial Magistrate, Fast Track Court, Ambattur by judgment dated 07.01.2016 and sentenced the petitioner to undergo three months Simple Imprisonment and directed the petitioner to pay



compensation of Rs.5,72,000/-. Aggrieved against the same, the petitioner filed an appeal before the District Sessions Court, Thiruvallur in C.A.No.13 of 2016. The learned Principal Sessions Judge, Thiruvallur, by judgment dated 21.12.2016 set aside the conviction of three months confirmed the compensation of Rs.5,72,000/-. Aggrieved against the same, the present revision petition is filed.

2.The contention of the petitioner is that the petitioner is running a tea shop and he borrowed Rs.1 lakh from the respondent. On 14.09.2012, the respondent, after deducting Rs.30,000/- towards interest paid Rs.70,000/- to the petitioner, the amount to be repaid by the petitioner by paying back the principal of Rs.500 per day for 200 days and repaid the entire amount. At that time, the respondent used to give acknowledgement in a small pocket book in his own handwriting. Earlier, a blank cheque was given by the petitioner to the respondent for security purpose, the same was filled up and misused by the respondent. The petitioner, during trial cross examined P.W.1, the complainant in detail on this aspect. Further, the case of the complainant is that the petitioner borrowed a sum of Rs.5,72,000/- for his business purpose. The petitioner was running a small tea shop in Avadi O.C.F. Factory, Abilash Complex during the period 02.08.2007 to 01.08.2012, further, one month extension was given to the petitioner, his permission period for running the tea shop got expired on 30.08.2012 and thereafter, he had no business. The petitioner examined the Chief Manager, H.V.F. Bank, Avadi Branch as P.W.1 to prove that the respondent never transacted such a huge amount in his account during the relevant period and marked Ex.P1. Further, the petitioner examined himself as P.W.2 and produced Ex.P2, allotment order of O.C.F. Factory, Avadi stating that the allotment order was for a period of five years, i.e. from 02.08.2007 to 01.08.2012. Ex.P3 is the order dated 04.08.2012 granting one month extension. Ex.P4 series is the pocket book, wherein the respondent signed for receiving the daily payments. These facts have not been considered by the Trial Court. Further, it is stated that the Lower Appellate Court, without analysing the evidence of the witnesses independently, verbatim reproduced the findings of the Lower Court, but set aside the sentence imposed by the Trial Court.

3.The case of the respondent/complainant is that the petitioner was running a tea shop, by which, the respondent had came to know about him and they were known to each other for



quite sometime. It is further submitted that for his business, periodically amounts were received by the petitioner from the respondent and in total, he received Rs.5,72,000/- as on 29.04.2013. When the same was asked to be repaid by the respondent, the petitioner issued a cheque for Rs.5,72,000/-, which was marked as Ex.D1. Thereafter, the cheque was deposited in the Bank for encashment and the same was returned with an endorsement "insufficient funds", which was marked as Ex.D2. The statutory notice was issued to the petitioner on 18.06.2016 and the same was returned as "refused", which was marked as Ex.D4. Further, by cross examination, the petitioner could not make much of the dent in the evidences. It is further stated that the issuance of cheque or his signature in the cheque was not disputed by the petitioner and thereafter, statutory presumption comes into play. The petitioner had not produced any evidence to prove the discharge of his liability and it was not proved even by way of cross examination. The Trial Court analysed the evidences of witnesses in detail, examined the materials produced and convicted the petitioner. The Lower Appellate also confirmed the conviction of the petitioner except for modifying the sentence imposed.

4.In this case, both the learned counsel for the petitioner and the learned counsel for the respondent are not present.

5.This Court perused the judgment of both the Courts below and the evidences of the witnesses produced by way of typed set of papers. On perusal of the same, it is seen that the issuance of cheque or his signature in the cheque was not disputed by the petitioner, the only defence is that the cheque was issued as security and the same was filled up. As per Section 20 of Negotiable Instruments Act, handing over of signed cheques gives authority to the holder of the cheque to fill up the same and the petitioner cannot have any grievance over that. During cross examination, the petitioner was unable to get any answer in support of his case. Further, the main plan of the petitioner seems to be that through Ex.P4 series pocket book, he repaid the loan which was obtained from the respondent. It is pertinent to note that in the evidence, not even a suggestion was put to the respondent with regard to the same. Further, the Trial Court after analysing the evidence of the witnesses and materials produced, passed a well reasoned order which was confirmed by the Lower Appellate Court.



WEB COPY

6. In view of the same, this Court finds no reason to interfere with the findings of the Courts below. Accordingly, the Criminal Revision Petition stands dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

cse

To

1. The Judicial Magistrate,
Fast Track Court, Ambattur
2. The Principal Sessions Judge,
District Sessions Court, Thiruvallur.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.942 of 2017

MG(CO)
CB(07/03/2022)