BAIL SLIP

The Petitioner/Accused viz., Sanjeevarayan, S/o.R.Venkatraman, aged about 33 years male, was to be released on bail by order dated 18.07.2017 made in Crl.MP.8888/2017 in Crl.Rc.953/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.R.C.NO.953 OF 2017

Sanjeevarayan ... Petitioner/
Appellant/Accused

Vs.

A. Mohanasundaram ... Respondent/
Respondent/Complainant

Prayer:

Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the judgment dated 14.06.2017 made in C.A.No.5 of 2017 on the file of the I Additional District Sessions Court, Erode confirming the order dated 02.12.2016 made in S.T.C.No.548 of 2014 on the file of the Fast Track Court cum Judicial Magistrate, Erode and set aside the same.

For Petitioner : Mr. T.Sathiyamoorthy

For Respondent : Mr. C.S. Saravanan

O R D E R

This revision is preferred against concurrent finding of the Courts below in a case arising under Section 138 of Negotiable Instruments Act.

2. The sum and substance of the private complaint is that the respondent herein gave Rs.2,75,000/- to the petitioner herein on 15.09.2012 for which he issued two cheques dated one 15.10.2012, for Rs.1.75 lakhs and another for Rs.1 lakh. On presentation of the said cheques for collection, the same got bounced with an endorsement "Funds Insufficient" and after passing statutory notice, private complaint has been filed.

2(i). To prove the case, the complainant has examined himself as P.W.1 and marked 9 exhibits. The petitioner herein took a defence that these cheques were issued to the complainant when the petitioner was carrying on share brokerage business and the complainant showed interest in investing in the said business. The same happened in the year 2010 and only as a security, the said two cheques were given to the respondent/complainant. Thereafter, on different dates, money was transferred into the account of the complainant and his wife, to the tune of Rs.2,85,180/-. Later on, when the share market entered a bear phase, the petitioner incurred loss. To extract money from him, the cheque issued as security is being misused.

2(ii). To substantiate the said defence, the accused has examined three witnesses and marked seven exhibits. The trial Court considering the evidence held that the appellant / accused is guilty of offence under Section 138, convicted him to undergo six months simple imprisonment and compensation of Rs.2,75,000/- in default, payment of compensation, one month simple imprisonment.

2(iii). Aggrieved by the said conviction and sentence, the petitioner herein has preferred an appeal before the I Additional District and Sessions Judge, Erode. On re-appreciating the evidence, the appellate Court has confirmed the order of the trial Court and dismissed the appeal. It is a concurrent finding.

3. The revision is filed on the ground that the Courts below failed to properly appreciate the fact that the subject cheques were issued to the complainant in the year 2010 as security and to prove the same, the Bank statement has been marked as Ex.D3. Further, to prove the Bank statements, Exs.D3 to D6, the open mutual and running account between the petitioner and respondent filed. Through the Bank statements, marked as Exs.D3 to D7, the claims of the complainant is disproved. Inspite of the above fact, the Courts below have erroneously held that the cheques were issued to discharge legally enforceable debt instead of holding it as a cheque issued only as a security.

4. Learned counsel for the revision petitioner would further submit that the receipt of Rs.2,85,180/- into the Bank account of the complainant and his wife not being explained by the complainant. While so, the Courts below ought not to have drawn the presumption under 139 of Negotiable Instruments Act against the petitioner herein. The complainant has failed to establish the fundamental fact of issuance of the subject cheque for any legally enforceable debt.

5. In response to his submission, the learned counsel appearing for the respondent point out the Insolvency Petition filed by the petitioner herein, it was marked as Ex.D7, wherein the petitioner herein has mentioned the debt of Rs.2,75,000/-, in the schedule meant for creditors. The said Insolvency Petition was filed during the year 2011 and having admitted the liability, the vague defence taken by the petitioner herein get failed. Hence, the trial Court as well as the appellate Court has rightly appreciated this fact and held the petitioner guilty.

6. This Court on considering the rival submission, particularly, in view of Ex.D7, which is an admission of the petitioner herein about the liability towards the respondent, holds that the Courts below has not erred in their finding and therefore, the findings of the Courts below is confirmed. Accordingly, the revision petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1. The Fast Track Court cum Judicial Magistrate,
   Erode.

2. The Chief Judicial Magistrate,
   Erode.

3. The I Additional District Sessions Court,
   Erode.

Copy To

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

+1cc to Mr. C.S. Saravanan, Advocate, S.R.No.36681
+1cc to Mr. T.Sathiyamoorthy, Advocate, S.R.No.36348

Crl.R.C.No.953 of 2017

PMK(CO)
PM/14/07/2022