Bail Slip

The Petitioner/Accused namely Akila, W/O Shanmuga Sundaram was released on bail dated:12/10/2011 made in CRL.MP.1/2011 in Crl.RC.NO.1398/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.1398 of 2011

Akila

...Petitioner /Accused

vs.

C.Arumugam

...Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. seeking to set aside the judgment of conviction dated 28.07.2011 passed in Crl.A. No.85 of 2010 on the file of the District and Sessions Court No.II at Kancheepuram, Preffered against the judgment of conviction dated 06.07.2009 passed in C.C. No.96 of 2008 on the file of the Judicial Magistrate Court No.I, Kancheepuram and consequentially, dismiss the complaint.

For petitioner Mr. M.L. Ramesh

For respondent Mr. K.V. Balaji

ORDER

This Criminal Revision has been filed seeking to set aside the judgment of conviction dated 28.07.2011 passed in Crl.A. No.85 of 2010 on the file of the District and Sessions Court No.II at Kancheepuram, confirming the judgment of conviction dated 06.07.2009 passed in C.C.No.96 of 2008 on the file of the Judicial Magistrate Court No.I, Kancheepuram and consequentially, dismiss the complaint.

2 For the sake of convenience, the petitioner and the respondent are referred to as the accused and the complainant respectively.

3 Succinctly stated, the case of the complainant is as under:

3.1 On 14.10.2007, the accused borrowed a sum of Rs.3

lakhs as hand loan from the complainant and issued a post dated cheque bearing date and number as 17.11.2007 and 299569 respectively, drawn on Allahabad Bank, Adyar, Chennai. When the complainant presented the cheque in his account with South Indian Bank, Kanchipuram, the same was returned unpaid with the endorsement "insufficient funds".

3.2 The complainant caused a legal notice dated 05.12.2007 to the accused and since the accused did not pay the cheque amount, he launched a prosecution in C.C. No.96 of 2008 before the Judicial Magistrate No.I, Kanchipuram under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

4 The complainant examined himself as P.W.1 and marked five exhibits. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against her, she denied the same. She examined five witnesses in all, including herself as D.W.1 and marked Exs.D.1 to D.3.

5 After appreciating the evidence on record, the Trial Court, by judgment dated 06.07.2009, convicted the accused under Section 138 of the NI Act and sentenced her to undergo one year rigorous imprisonment and pay compensation of Rs.3 lakhs to the complainant.

6 On appeal by the accused in Crl.A. No.85 of 2010, the Sessions Court confirmed the conviction, but, set aside the sentence of one year rigorous imprisonment, in lieu of which, the accused was directed to pay the cheque amount to the complainant within a period of six months, on the failure of which, it was ordered that the sentence of one year rigorous imprisonment imposed by the Trial Court would stand revived. Challenging the judgments made by the Courts below, the accused is before this Court.

7 Heard Mr. M.L. Ramesh, learned counsel for the accused and Mr. K.V. Balaji, learned counsel for the complainant.

8 It is trite that the Revisional Court cannot act as a second appellate Court and re-appreciate the evidence on record. However, if it is shown that material evidences have been overlooked by the Courts below, the power of the Court to re-appraise the evidence can be exercised under Section 397 and 401 Cr.P.C. (See State of Maharashtra, etc. vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.[1]).

9 In the instant case, the complainant has not produced any document like promissory note or receipt to show that he had given the hand loan of Rs.3 lakhs to the accused on 14.10.2007. Of course, it is not necessary that in every case, there should be a document to prove the loan transaction, since law recognises oral contract.

[1]

10 It is the case of the defence that the accused had not borrowed any money from the complainant, but, her husband Shanmugasundaram (D.W.2) had borrowed a sum of Rs.3.00 lakhs from the complainant and at that time, the complainant had obtained two blank cheques from Shanmugasundaram (D.W.2) and two blank cheques from her (accused), thus, totally, four blank cheques, as security; Shanmugasundaram (D.W.2) had returned Rs.2.50 lakhs out of the loan amount of Rs.3.00 lakhs by depositing five cheques, each for a value of Rs.50,000/-, in the account of Ranjith (D.W.5), the son of the complainant, leaving a balance of Rs.50,000/- payable to the complainant, to extract which, the complainant has launched the present prosecution, by filling the blank cheque of Akila (accused).

11 The learned counsel for the complainant submitted that the accused has not denied her signature in the impugned cheque (Ex.P.1) and therefore, the burden is on her under Section 139 of the NI Act to prove that there was no debt, which burden, she has failed to discharge.

12 The learned counsel for the accused submitted that the Trial Court and the lower appellate Court have overlooked the evidence of Ranjith (D.W.5), the son of the complainant, in whose account, Shanmugasundaram (D.W.2) had deposited a sum of Rs.2.50 lakhs on five occasions at the rate of Rs.50,000/- each, in settlement of the loan availed by him from the complainant.

13 It is the case of the defence that the complainant was a professional money lender and was in the habit of taking repayments through the account maintained by his son Ranjith (D.W.5).

14 In this case, the complainant has satisfactorily proved the presentation of the cheque, the dishonour of the cheque, issuance of statutory notice to the accused and the failure of the accused to make the repayment. However, the question that emerges for the consideration of this Court is whether the complainant has proved the debt.

15 Though a burden under Section 139 of the NI Act to disprove the debt is cast on the accused when once she admits her signature in the cheque, yet, the said burden can be discharged by preponderance of probability as held by the Supreme Court in Rangappa vs. Sri Mohan[2].

16 In the case at hand, the accused waived her right of silence and got into the witness box as D.W.1 and stated that she had not borrowed any money from the complainant and that she had signed the impugned cheque (Ex.P.1) and had given it to her husband Shanmugasundaram (D.W.2), who wanted to give it as security to the complainant.

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17 On perusal of the impugned cheque (Ex.P.1), it is seen that the signature of the accused is in black ink, but, the writings thereon are in blue ink. This is one of the circumstances, which, this Court is constrained to bear in mind while deciding the contentious issues.

18 Shanmugasundaram (D.W.2), the husband of the accused, in the chief-examination, has deposed that he had borrowed Rs.3.00 lakhs from the complainant and had repaid Rs.2.50 lakhs by crediting the said amount in the account of Ranjith (D.W.5), the son of the complainant, in five instalments. The complainant has not denied that Ranjith (D.W.5) is his son. The accused examined one Murugavel (D.W.3), Assistant Manager, Tamil Nadu Mercantile Bank, where, Shanmugasundaram (D.W.2), the husband of the accused, was maintaining his account. Through the said Murugavel (D.W.3), the accused has marked Ex.D.2 series, viz., copies of five cheques dated 03.02.2007, 18.02.2007, 03.03.2007, 18.03.2007 and 03.04.2007, for Rs.50,000/- each, issued by Shanmugasundaram (D.W.2), to Ranjith (D.W.5), which have been honoured. The accused has also examined Stanley Balsingh (D.W.4), Branch Manager of ICICI Bank, Santhome Branch, where, Ranjith (D.W.5) was maintaining his account and the bank statement of Ranjith (D.W.5) has been marked as Ex.D.3.

19 As stated above, it is the specific defence of the accused that Shanmugasundaram (D.W.2) had borrowed Rs.3.00 lakhs from the complainant and at the instance of the complainant, he had issued cheques in the name of his son Ranjith (D.W.5) to the tune of Rs.2.50 lakhs. The accused did not stop with that, but, examined Ranjith (D.W.5). Ranjith (D.W.5) was 21 years old on 23.06.2009, when he was summoned to give evidence in this case. In his examination-in-chief, he has stated that he is doing engineering course in Sathyabama Engineering College. He has further stated that he has an account in ICICI Bank, but, pleaded total ignorance about the cheques (Ex.D.2 series) which were credited into his account. He has further stated that he does not know Shanmugasundaram (D.W.2) at all. Nevertheless, in the cross-examination by the counsel for the complainant, he has stated that he and his friends were doing business in second hand ceramic tiles and had supplied second hand ceramic tiles to Shanmugasundaram (D.W.2), for which, he had received amounts from him. At the request of the counsel for the accused, he was declared hostile and was cross-examined by the counsel for the accused. In the cross-examination by the counsel for the accused, he has stated that he was doing second hand ceramic tiles business as part time occupation even while studying. He was not able to produce any bill or other material for having sold second hand ceramic tiles worth Rs.2.50 lakhs to Shanmugasundaram (D.W.2). Ultimately, it was suggested to him that, for the loan taken by Shanmugasundaram (D.W.2) from his father, Arumugam, the five cheques for Rs.50,000/- each were issued, which suggestion, he denied.

20 The learned counsel for the complainant submitted that even according to Shanmugasundaram (D.W.2), he had availed loan only from Ranjith (D.W.5) and not from his father Arumugam, the complainant and therefore, this loan transaction cannot be confused with the loan transaction between Arumugam, the complainant and Akila, the accused. This Court is unable to find any substance in this argument. In the given situation, the accused has done her best by examining not only herself as D.W.1, but also by examining the complainant's son Ranjith as D.W.5. The defence has satisfactorily established that Ranjith (D.W.5) was having an account in ICICI Bank and totally, a sum of Rs.2.50 lakhs has come into his account by way of five cheques for Rs.50,000/- each vide Ex.D.2 series from Shanmugasundaram (D.W.2). The evidence of Ranjith (D.W.5) that the cheques were issued for sale of second hand ceramic tiles defies credulity. The reason for this Court to give such a finding is that, in the chief-examination, he has stated that he does not know Shanmugasundaram (D.W.2). But, in striking contrast, in the cross-examination by his father's counsel, he has stated that he had supplied second hand ceramic tiles to Shanmugasundaram (D.W.2), for which, he had received Rs.2.50 lakhs. It is noteworthy that the sum of Rs.2.50 lakhs has been paid by Shanmugasundaram (D.W.2) by way of five cheques as a round figure of Rs.50,000/- each without there being any fraction, which would not have been the case in transactions involving second hand ceramic tiles. Ranjith (D.W.5) was not able to produce even a shred of evidence to show that he was doing second hand ceramic tiles business and that he had sold them to Shanmugasundaram (D.W.2). Therefore, the defence have probabilised beyond reasonable doubt the factum of the loan transaction between Shanmugasundaram (D.W.2), husband of Akila, the accused and the complainant.

21 In the light of this evidence, the difference in the ink in the impugned cheque referred to above assumes great significance and fortifies the case of the accused that the signed, but, blank cheque was given as security to the complainant by her husband for the loan taken by him.

In the result, this criminal revision succeeds and the conviction and sentence imposed on the accused are hereby set aside. Bail bond, if any, executed by the accused shall stand cancelled. The Registry is directed to return the original records immediately to the Trial Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

1 The District and Sessions Judge No.II
Kancheepuram

2 The Judicial Magistrate No.I
Kancheepuram

3.The Chief Judicial Magistrate,
Chengalpet.

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

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.86560

Crl.R.C. No.1398 of 2011

SR(CO)
GSP(11/01/2019)