

Bail Slip

The Revision Petitioner/Accused S.Raju @ R.V.Rangasamy S/o.K.M.S.R.Venkatraman was enlarged on bail in MP No.1/2011 in Crl.R.C.No.711/2011 dated 29.04.2011 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.711 of 2011
and
CRL.M.P.Nos.1 & 2 of 2011

S.Raju .. Petitioner

Vs

S.Rajeswari ... Respondent

Criminal Original Petition filed under Section 397 r/w 401 Cr.P.C., praying to allow this revision and set aside the judgment in C.C.No.217 of 2006 on the file of the Judicial Magistrate No.IV at Salem dated 04.08.2010 and modifying the judgment in C.A.No.132 of 2010 on the file of Addl. District and Sessions Judge, Fast cum Track Court I, at Salem, dated 14.02.2011.

For Petitioner : Mr.R.Rajan

For Respondent : Mr.P.Jagadeesan

ORDER

For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant. It is the case of the complainant that the accused is none other than the nephew of her husband Sivaraman and the accused was running a proprietorship concern in the name and style of M/s.Textile Corporation; the accused took a hand loan of Rs.4,00,000/- from the complainant in the middle of June 2005, agreeing to repay the same with interest; towards the loan, he issued two cheques for Rs.1,00,000/- each dated 20.12.2005 (Ex.P1) and 27.12.2005 (Ex.P2) drawn on HDFC bank, Koramangalam Branch, Bangalore; the complainant presented the two cheques through her banker, HDFC bank, Salem branch for collection and the cheques were returned with the return memo

(Ex.P3) and (Ex.P4) on the ground "Account Closed"; the complainant issued statutory notice dated 23.05.2006 (Ex.P5) for which, the accused sent a reply notice dated 29.05.2006 (Ex.P7) repudiating the claim. Therefore, the complainant initiated prosecution in C.C.No.217 of 2006 before the Judicial Magistrate No.IV, Salem, under Section 138 of Negotiable Instruments Act against the accused.

2.On the appearance of the accused, he was furnished with a copy of the complaint and was questioned under Section 251 Cr.P.C. The accused denied the accusation.

3.To prove the case, the complainant examined herself as PW1 and one Sankarnarayan, Branch Manager of HDFC bank, Salem branch as PW2.

4.When the accused was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

5.The trial Court, after considering the evidence on record and hearing either side, by judgment dated 04.08.2016, convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Rigorous Imprisonment and pay fine of Rs.5,000/- in default suffer three months Simple Imprisonment.

6.Challenging the conviction and sentence, the accused preferred Crl.A.No.132 of 2010 before the Court of Session and the learned Additional District and Sessions Judge, Fast Track Court-I, Salem dismissed the appeal on 04.02.2011, aggrieved by which, the accused is before this Court under Section 397 and r/w Section 401 Cr.P.C.

7.Heard Mr.R.Rajan, learned counsel for the accused and Mr.P.Jagadeesan, learned counsel for the complainant.

8.Mr.R.Rajan formulated the following points;

a)That the impugned cheques Ex.P1 and Ex.P2 do not even bear the seal of the bank;

b)That the cheques were presented on 10.05.2006 and they were returned on the very same day vide Ex.P3 and Ex.P4. Therefore, the very presentation of the cheques by the complainant raises suspicion;

c)That the complainant has failed to prove the debt satisfactorily.

9.Per contra, Mr. P.Jagadeesan refuted the contentions.

10.Before appreciating the rival contentions, it may be necessary to bear in mind the following statement of law laid

down by the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004)7 SCC 659.]

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)"

11.Rajeswari (PW1) in her evidence has deposed that the accused is the son of her husband's brother and that, the accused was running a Company in the name and style of M/s.Textile Corporation; he borrowed Rs.4,00,000/- as hand loan in June 2005 agreeing to repay the same with interest; he gave the two cheques Ex.P1 and Ex.P2 for Rs.1,00,000/- each towards the liability; the cheques were presented on 10.05.2006 and the same were returned vide return memos Ex.P3 and Ex.P4 on the ground "account closed". She was examined in-chief on 18.08.2007 and the accused did not cross-examine her on that date and she was recalled in the year 2010 and was cross-examined on 12.02.2010. In the cross-examination, she has stated that, she had given the loan on 25.06.2005 and that, she had not given any other loan either earlier to that date or subsequently, to the accused.

12.She has further stated that the accused had given four cheques towards the loan of Rs.4,00,000/- which he had received. To a specific question during examination, she has stated that, when she asked the accused whether the cheque should be

deposited on the date mentioned thereon, he requested her not to deposit and therefore, she did not deposit as on the date mentioned in the cheque. She has denied the suggestion that there was no loan transaction. It may be necessary to state here that in the reply notice (Ex.P7), the accused has taken a very specious defence that the cheques were given towards payment of property tax in respect of certain joint family properties that are yet to be partitioned. After having taken such a stand in the reply notice, the accused has not even chosen to make any suggestion on these lines to PW1 nor set up a defence on these lines in his examination under Section 313 Cr.P.C. Though the accused can take conflicting defence, yet in a case under Section 138 of the Negotiable Instruments Act, the presumption under Section 139 of the Negotiable Instruments Act comes into play. Of course, the presumption under Section 139 of the Negotiable Instruments Act can be discharged by the accused, by preponderance of probability and not by proof beyond reasonable doubt as held by the Supreme Court in Rangappa Vs Sri Mohan [2010 (4) CTC 118].

13. In this case, the accused has failed to discharge the burden under Section 139 of the Negotiable Instruments Act, even by preponderance of probability. As regards the contentions of Mr. R.Rajan, learned counsel for the petitioner that there is no seal on the impugned cheques, this Court is of the view that it cannot be put against the complainant because, the complainant cannot be responsible for the failure of the bank in affixing their seal on the cheque. However, the impugned cheques were drawn on HDFC bank, Bangalore Branch, maintained by the accused, which has not been denied by him. The complainant has presented the impugned cheques with her bank viz. HDFC bank, Salem Branch, and it is possible that, the Salem Branch would have contacted their counter part in Bangalore and after ascertaining that the account has been closed would have issued the return memos Ex.P3 and Ex.P4 on the same day.

14. Hence, this Court is of the view that all these aspects have been discussed in detail by the trial Court and the appellate Court and this Court does not find any infirmity in the appreciation of evidence warranting interference under Section 397 r/w 401 Cr.P.C.

15. However, Mr.Rajan, learned counsel for the petitioner contended that the sentence of Imprisonment may be reduced taking in to consideration the fact the accused has closed down his business.

16. It seen that neither trial Court nor the appellate Court has awarded any compensation to the complainant. Hence, in view of the same, the substantive sentence of one year Simple

Imprisonment is reduced to six months Rigorous Imprisonment and fine amount of Rs.5,000/- is set aside and in lieu of which, the accused shall pay compensation of Rs.2,00,000/- being the cheque amount to the complainant, with in three weeks from the date of receipt of copy of this order in default shall undergo six months Simple Imprisonment. The bail bonds are cancelled and the trial Court is directed to take the accused in to custody.

With the above modification, this revision is partly allowed. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Addl. District and Sessions Judge,
Fast Track Court I, Salem.
2. The Judicial Magistrate No.IV, Salem.
3. - do - through The Chief Judicial Magistrate, Salem

Copy To : The Section Officer, Criminal Records Section,
High Court Madras,

+lcc to Mr.P.Jagadeesan, Advocate SR.No.82041

SVN(CO)

GMV (04/01/2019)

CRL.R.C.No.711 of 2011

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