

Bail Slip

The Petitioner /Accused,namely Mr.A.Sureshkumar S/o.Arumugam Sole Accused in CC.NO.427/09 by the Judicial Magistrate No.III, Erode dated 16.06.2010 was directed to be released on bail as per order of this Court dated 19.08.2011 in CRL MP.NO.1/11 IN CRL RC.NO.1052/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.01.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. R.C. NO. 1052 OF 2011

A.Sureshkumar .. Petitioner

- Vs -

P.Sundaram .. Respondent

Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment and conviction dated 6.5.11 made in C.A. No.84/2010 on the file of the Addl. District and Sessions Judge (FTC No.I), Erode, confirming the judgment and and conviction dated 16.6.10 made in C.C. No.427/09 passed by the Judicial Magistrate No.III, Erode.

For Petitioner : Ms. S.Varsha

for Mr.Naveen Kumar Murthi

For Respondent : Mr. N.S.Suganthan

ORDER

The criminal revision has been filed by the petitioner against the judgment and conviction dated 6.5.11 made in C.A. No.84/2010 on the file of the Addl. District Judge (FTC No.I), Erode, confirming the judgment and and conviction dated 16.6.10 made in C.C. No.427/09 passed by the Judicial Magistrate No.III, Erode.

2. For the sake of convenience, the parties will be referred to as the complainant and the accused.

3. It is the case of the complainant that on 10.12.2017 the accused borrowed a sum of Rs.4,50,000/- as loan and, thereafter, issued a cheque dated 10.03.2008 for

the said sum drawn on Indus Ind Bank, Erode Branch. The complainant presented the cheque for clearance, but it was returned on 22.3.08 on the ground "stop payment". Thereafter, the complainant issued a statutory demand notice dated 26.03.2008 (Ex.P-3) to the accused, which has been received by the accused vide acknowledgement card (Ex.P-4). Since the accused did not make the payment, the complainant initiated prosecution in C.C. No.427/09 u/s 138 of the Negotiable Instruments Act before the Judicial Magistrate No.3, Erode.

4. On the appearance of the accused, he was questioned u/s 251 Cr.P.C. and he denied the accusation. To prove the case, the complainant examined himself as P.W.1 and marked 9 exhibits (Exs.P-1 to P-9). When the accused was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, 3 witnesses (D.W.s 1 to 3) were examined, including the accused, who examined himself as D.W.3 and 3 exhibits (Exs.D-1 to D-3) were marked. After considering the evidence on record, the trial court, by judgment dated 16.6.10, in C.C. No.427/09 convicted the accused of the offence u/s 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of three months and to pay compensation of Rs.4,50,000/- u/s 357 (3) Cr.P.C.

5. Challenging the conviction and sentence, the accused filed C.A. No.84/10, which was heard by the Addl. District & Sessions Judge (FTC No.I), Erode, and the same was dismissed on 6.5.11, challenging which the accused has filed the present revision petition u/s 397 r/w 401 Cr.P.C.

6. Heard Ms. S.Varsha, learned counsel appearing for the accused and Mr.Suganthan, learned counsel appearing for the complainant.

7. Ms. Varsha, learned counsel for the accused, made the following submissions :-

a) the complainant had failed to prove the debt satisfactorily inasmuch as he has not marked any promissory note or any other document in support of the debt; and

b) the accused had discharged the burden u/s 139 of the Negotiable Instruments Act by examining himself as witness.

8. Per contra, Mr. Suganthan, learned counsel appearing for the complainant, refuted the contentions.

9. This Court gave its anxious considerations to the rival submissions and also perused the materials available on record.

10. Before adverting to the rival submissions, it would be apposite to state that while dealing with a revision petition under Section 397 r/w 401 Cr.P.C., this Court cannot re-appreciate the evidence, as if it is a Court of second appeal. In this regard, it is profitable to allude to the following paragraphs in the judgment of 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)

23.On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed 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."

11. If it is shown that the Courts below have overlooked any material piece of evidence, which would have otherwise turned the tables in favour of the petitioner or had grossly misappreciated the evidence, then, it is open to this Court to reappraise the same.

12. The complainant, who examined himself as P.W.1 has stated that the accused borrowed Rs.4,50,000/- from him and issued the impugned cheque (Ex.P-1) and when the same was presented, it was returned unpaid on 11.3.08 vide return memo (Ex.P-2) on the ground "stop payment". The complainant issued the statutory demand notice dated 22.3.08 (Ex.P-3), which was received by the accused on 26.03.08, vide postal acknowledgement card (Ex.P-4). The bank accounts of the complainant have also been marked as Exs.P-5 to P-9.

13. In the cross examination, the complainant has stated that he is a textile commission agent. The trial court and the appellate court have appreciated the evidence of the complainant and have held that he cannot be said to be a man of no means to give a loan of Rs.4,50,000/= to the accused.

14. It may be relevant to state here that the accused did not issue any reply notice to the statutory demand notice that was issued by the complainant. However, that cannot be said to be fatal in all cases. In this case, the accused examined Rajagopal (D.W.2), the Manager of his bank, through whom he marked the stop payment letter (Ex.D-2) that he had issued to the bank. In Ex.D-2, the accused has stated that he had lost an unfilled cheque leaf bearing No.236187 (impugned cheque). However, the accused examined

himself as D.W.3 and stated that he had given the impugned cheque to his brother-in-law, Prakash and Prakash had borrowed money from various persons, including the complainant herein and had given his (accused) cheque; that the said Prakash died and, hence a false claim has been lodged by the complainant against him (accused). Both the Courts have disbelieved this theory because it clearly runs counter to the stand taken by the accused in Ex.D-2, wherein he has stated that he lost the unfilled impugned cheque leaf. Though the accused can discharge the burden u/s 139 of the Negotiable Instruments Act by preponderance of probability, as held by the Supreme Court in Rangappa - Vs - Sri Mohan (2010 (11) SCC 441), yet the mutually destructive defence taken by the accused has been rejected by both the courts below and this Court does not find any perversity in the reasoning given by the Courts below.

15. For the reasons aforesaid, this petition, being devoid of merits, is accordingly dismissed. The trial court is directed to take the accused into custody for undergoing the sentence.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Addl. District & Sessions Judge
FTC No.I, Erode.
2. The Judicial Magistrate No.III
Erode.
- 3 .The Chief Judicial Magistrate,
Erode.

+1cc to Mr. Naveen Kumar Murthi, Advocate SR.No. 5967

+1cc to Mr. N.Manoharan, Advocate SR.No. 5839

copy to:

The section officer,
Criminal Section,
High court,Madras

(2 Copies)

CRL. R.C. NO. 1052 OF 2011

A.SK(08/03/2019)