BAIL SLIP

The appellant/accused viz., L.Dilip Kumar, S/o.Lalchand Gandhi (in C.C.No.89/2003 on the file of the Additional District Judge, Fast Track Court No.I, Chengalpattu in C.A.170/06) was directed to be released on bail as per order of this Court dated 23.08.2011 made in M.P.1/2011 in Crl.R.C.No.1159/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2019

DELIVERED ON: 30.01.2019

CORAM:

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

CRL.R.C.No.1159 of 2011

L. Dilip Kumar ...Petitioner

-Vs-

The State by Inspector of Police
Pazhavanthangal Police Station
Pazhavanthangal, Chennai ...Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. seeking to set aside the judgment of conviction dated 26.10.2006 passed by the Judicial Magistrate, Alandur in C.C. No.89 of 2003 as confirmed by the judgment dated 18.08.2011 passed by the Additional District Judge (Fast Track Court No.I), Chengalpattu in Crl.A. No.170 of 2006.

For petitioner : Mr. Jesus Moris Ravi

For respondent : Mr. G. Ramar
Government Advocate
(Crl. Side)

ORDER

This criminal revision has been filed seeking to set aside the judgment of conviction dated 26.10.2006 passed by the

Judicial Magistrate, Alandur in C.C. No.89 of 2003 as confirmed by the judgment dated 18.08.2011 passed by the Additional District Judge (Fast Track Court No.I), Chengalpattu in Crl.A. No.170 of 2006.

2 Minus the minute details, the germane facts leading to the institution of this criminal revision are as under:

2.1 It is the case of the prosecution that the petitioner was the Managing Director of Suparshva Steels and Alloys Limited (for brevity "Suparshva") and the said company was maintaining Current Account No.668 with Canara Bank, Nanganallur Branch and was importing scrap iron and steel from Sri Lanka. According to their business practice, as and when, a consignment is imported from Sri Lanka, the supplier would send the bill of lading, invoice and other documents through Sampath Bank, Colombo to Canara Bank, Nanganallur Branch. On payment of the bill amount by the petitioner, Canara Bank would release the documents and the petitioner would take delivery of the consignment from the port. While that being so, Canara Bank received two bills viz., FISC 4/01 dated 16.02.2001 for USD 8389.50 drawn by APIC Imports and Exports, Colombo and FISC 6/01 dated 16.02.2001 for USD 7868.74 drawn by Asian Imports and Exports, Colombo through Sampath Bank, Colombo. Canara Bank informed the petitioner to make payment and take delivery of the documents. The petitioner did not make any payment and therefore, Canara Bank waited for a reasonable period and returned both the bills to Sampath Bank, Colombo on 22.07.2001. Thereafter, Canara Bank received a communication from Sampath Bank, Colombo to the effect that one copy of the bill of lading was found missing and the consignment was also taken delivery by Suparshva from the port through Maruthi Enterprises, Clearing and Forwarding Agent on 24.05.2001. After receiving this communication, when Canara Bank contacted the petitioner, the petitioner initially denied the allegation, but, later, accepted and issued admission letters dated 15.09.2001 (Ex.P1), 25.09.2001 (Ex.P2), 27.09.2001 (Ex.P4), 20.07.2002 (Ex.P5) and 20.09.2002 (Ex.P6) and also repaid part amounts. The total value of the two bills was Rs.7,80,500/- (USD 16258.24), towards which, the petitioner repaid Rs.1,88,455/- and the backlog was Rs.5,92,045/-, which, Canara Bank had to pay to Sampath Bank, Colombo.

2.2 On the complaint (Ex.P3) dated 26.09.2001 lodged by Santhanam (P.W.1), Senior Manager, Canara Bank, Selvam (P.W.4), Sub-Inspector of Police, registered a case in Crime No.342 of 2001 under Sections 420 and 468 IPC and the investigation was taken over by Sivakumar (P.W.5), Inspector of Police. After completing the investigation, the Investigating Officer filed final report in C.C.No.89 of 2003 before the Judicial Magistrate, Alandur.

2.3 On the appearance of the petitioner, he was furnished with the copies of the relied upon documents under Section 207 Cr.P.C. The trial Court framed charges under Sections 420 and 468 IPC against the petitioner. When questioned, the petitioner pleaded 'not guilty'.

2.4 To prove their case, the prosecution examined five witnesses and marked seven documents. When the petitioner was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same, but, stated that his employee had done it. No witness was examined nor any document marked on the side of the petitioner.

2.5 The trial Court, after hearing either side and considering the evidence on record, convicted the petitioner in C.C.No.89 of 2003 on 26.10.2006 under Sections 420 and 468 IPC and sentenced him as follows :

Provision under which convicted	Sentence
Section 420 IPC	three years rigorous imprisonment
Section 468 IPC	three years rigorous imprisonment

The aforersaid sentences were directed to run concurrently. The trial Court also directed payment of Rs.7,80,000/- as compensation under Section 357(3) Cr.P.C. to Canara Bank.

2.6 Challenging the conviction and sentence, the petitioner filed Crl.A.No.170 of 2006 before the Court of Session, which was heard by the Additional District Judge (Fast Track Court-I), Chengalpet and dismissed on 18.08.2011.

2.7 Calling in question the legality and validity of the conviction and sentence imposed by the trial Court and the appellate Court, the petitioner has filed the present revision petition under Sections 397 and 401 Cr.P.C.

3 Heard Mr.P.Jesus Moris Ravi, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the State.

4 Before adverting to the rival submissions, it may be necessary to state here that, while dealing with a revision petition under Sections 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.[1].

> "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."

However, if it is shown that the Courts below have overlooked any material piece of evidence, which would have otherwise

1 (2004)7 SCC 659

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.

5 In this case, the case of the prosecution hinges mainly upon the evidence of Narayanan (P.W.2), Manager, Canara Bank and Chandrasekar (P.W.3), Special Assistant, Canara Bank.

6 Narayanan (P.W.2) was examined-in-chief on 07.04.2005. In the chief-examination, Narayanan (P.W.2), has stated that he is the Manager in Canara Bank; Suparshva, run by Dilipkumar, was holding a Current Account in the branch; the company was importing iron; the import documents like invoice, bill, etc. will be received by the branch and after the payment is made, the same will be intimated to the bank of the exporter; on 16.02.2001, the branch received two invoices, one from APIC Import and Export and another from Asian Import and Export through Sampath Bank, Colombo; the receipt of the document was informed to Suparshva; the documents were in the custody of Chandrasekar (P.W.3) of the Invoice Department; the petitioner met Chandrasekar (P.W.3) and requested him to show the documents; on trust, Chandrasekar (P.W.3) handed over the documents to the petitioner and thereafter, he was busy attending to other work; the petitioner returned the documents, saying that he would make the payment and take delivery; the petitioner did not make any payment for a long time and therefore, on 27.07.2001, Canara Bank returned the documents to Sampath Bank, Colombo; after some time, Canara Bank received a communication from Sampath Bank, Colombo, stating that one set of the documents was found missing and the party had taken delivery of the goods, through his Clearing and Forwarding Agent; on coming to know of this, he (P.W.2) personally met the petitioner and enquired him about this; initially, the petitioner was in the mode of denial; on further enquiry, the petitioner accepted that he had removed one set of the documents from the original and had taken delivery of the consignment; he gave a letter dated 15.09.2001 (Ex.P1) and also deposited Rs.1,00,000/- in the bank; again on 25.09.2001, he gave another letter (Ex.P2) and remitted Rs.40,000/-; on 27.09.2001, the petitioner deposited Rs.50,000/- and also gave a letter (Ex.P4); on 20.07.2002, the petitioner gave a letter (Ex.P5) stating that he would sell his property and clear the bank dues; on 20.09.2002, the petitioner sent another letter (Ex.P6), stating that he will deposit the amount on 30.09.2002 and requested the bank, not to take any coercive action; Sampath Bank, Colombo demanded payment for the bills and Canara Bank made the payment; the total amount due from the petitioner is Rs.5,92,045/-.

7 Narayanan (P.W.2) was not cross-examined on the same day. He was re-called and cross-examined on 08.02.2006. In the

cross-examination, Narayanan (P.W.2), has stated that Suparshva was maintaining accounts with Canara Bank from 1991; they are into import of iron and steel scrap; on receipt of import documents, the bank would inform the customer; on the amount being paid by the customer, the documents will be released; on 16.02.2001, documents were received from Sampath Bank, Colombo; after that, the concerned official of the bank informed the petitioner of this in person; on 26.07.2001, the documents were sent back to Sampath Bank, Colombo; for about five months, the bank waited; the bank will not normally send back the documents immediately, but, will give reasonable time for the party to make payment and only thereafter, the documents will be returned; on 17.08.2001, Canara Bank received a communication from Sampath Bank, Colombo, stating that the negotiable part of the bill of lading was not returned and it should be either returned or the amount paid; from 16.02.2001 to 26.07.2001, they were under the belief that the documents were safe with them and they realised that one set of the documents had gone missing only in August 2001, when they received the communication from Sampath Bank, Colombo; Chandrasekar (P.W.3) was the staff in charge of the foreign bills section; normally, the goods should be released only after an endorsement is made by the bank that the amount has been remitted; but, in this case, the goods were released without the endorsement of the bank. Ultimately, it was suggested to him that on account of the negligence of Chandrasekar (P.W.3), the incident had occurred and only in order to safeguard him, a false case has been put against the petitioner, which suggestion, he denied. It was also suggested to him that various letters were obtained from the petitioner by coercion, which also, he denied. Except the suggestion part, the rest of the questions posed in the cross-examination appears, as if the witness was being examined in-chief.

8 Chandrasekar (P.W.3), the concerned staff of Canara Bank was examined-in-chief on 07.04.2005. In the chief-examination, he has stated that he was working in Canara Bank as Special Assistant; Suparshva was having account in the bank; they are into import and export business; the petitioner was the Managing Director of Suparshva; import documents like invoice and bill of lading will be received by the bank; in this case, two bills of lading valued at USD 7868.74 from Sampath Bank, Colombo were received; this was informed to the petitioner; the petitioner used to get the details and will make payment for only one bill at a time; this was his practice; on 18.02.2001, the petitioner came to the bank as usual and asked him to show the documents which were received; accordingly, he handed over the documents to the petitioner for perusal and was attending to demand drafts clearing duty; since the petitioner was a known customer, he handed over the documents to him; the petitioner returned the documents saying that he will make payment later;

four months later, i.e., on 26.07.2001, the documents were sent to Sampath Bank, Colombo, since no payment was made by the petitioner; thereafter, Canara Bank received a communication from Sampath Bank, Colombo to the effect that one set of documents was found missing and the party had taken delivery of the goods; on coming to know of this, Narayanan (P.W.2) met the petitioner and questioned him about this; the petitioner accepted everything and repaid Rs.1,90,000/- and thereafter, he did not make any payment.

9 Chandrasekar (P.W.3) was cross-examined only on 08.02.2006. In the cross-examination, he has stated that from 16.02.2001 to 26.07.2001, the documents sent by Sampath Bank, Colombo were available in the branch; since the payment for the bills was not forthcoming, the documents were sent to Sampath Bank, Colombo; while returning the documents on 26.07.2001, he did not notice the missing set of documents. It was suggested to him that on account of his negligence only, the document went missing and in order to escape departmental action, a case has been foisted on the petitioner, which suggestion, he denied.

10 The learned counsel for the petitioner submitted that the original bill of lading, which the petitioner is said to have forged, has not been filed and therefore, the conviction and sentence under Section 468 IPC cannot be maintained. It is true that the original bill of lading was not marked in this case. However, that cannot automatically lead to the acquittal of the petitioner of the charge under Section 468 IPC, because, the prosecution have satisfactorily established through circumstantial evidence that the petitioner had come to the bank on 18.02.2001 and had requested Chandrasekar (P.W.3) to permit him to peruse documents; Chandrasekar (P.W.3), in good faith, handed over the documents to the petitioner for perusal; Chandrasekar (P.W.3) was attending to other emergency duties in the bank relating to clearing demand drafts and the petitioner returned the documents to Chandrasekar (P.W.3) saying that he will make payment later. It is not the case of the petitioner that he had not taken delivery of the consignments. For taking delivery of the consignments, Narayanan (P.W.2) has clearly stated that the endorsement by the bank on one set of documents intended for the customer has to be made. In the letter dated 15.09.2001 (Ex.P.1) given by the petitioner to the Senior Manager, Canara Bank, he has stated as follows:

> ".....We regret to inform you that while sealing the other import bills during February 2001, we have by mistake taken the third copy (negotiable copy) of the unrealised bills, from the bills section of your office only without any payment authorisation from Bank. We have also taken delivery of the goods from the third copy

> of the B/L from the clearing agent without Bank authorisation to hand over the goods to us. Due to improper maintenance of our records, we could not locate the mistake for so long.
>
> We undertake to clear the major portion of the amount by Tuesday (i.e., 18.09.2001) and the balance will be remitted within next two days and we request you to allow the matter to rest.... "

The negotiable copy of the bill of lading has been handed over to the port and delivery of the goods has been taken. It would have been ideal if the Investigating Officer had seized the bill of lading from the port authorities. For this remissness in investigation, it cannot be held that the charge under Section 468 IPC has not been established. This can be illustrated with this example. Just because the dead body is not recovered, the accused in a murder case cannot be acquitted, if the prosecution had established the factum of murder through other evidence.

11 The learned counsel for the petitioner contended that Suparshva has not been arraigned as accused and ergo, the prosecution stands vitiated. Be it borne in mind that this prosecution is not a prosecution under the Negotiable Instruments Act, 1881, to make the Managing Director vicariously liable for the offence committed by the company. In this case, overwhelming evidence show that the petitioner was the Managing Director and it was he who had come to the bank on 18.02.2001 and had stealthily taken away one set of the documents from Chandrasekar (P.W.3). It is true that on account of negligence of Chandrasekar (P.W.3), the petitioner gained undue advantage, but, that cannot absolve the petitioner from criminal liability and at the most, Chandrasekar (P.W.3) can be departmentally proceeded against for having reposed trust on the petitioner and given the documents to him for perusal.

12 The learned counsel for the petitioner further contended that Maruthi Enterprises was neither arraigned as an accused nor cited as a witness. It is pertinent to point out that Maruthi Enterprises had acted only as the Clearing and Forwarding Agent of Suparshva. In other words, they had cleared the consignments on the petitioner handing over the documents. Ergo, they were not party to the offence committed by the petitioner. The petitioner has not suggested to any of the witnesses that he had not taken delivery of the consignments. Had he taken such a defence, then, the non-examination of the Clearing and Forwarding Agent to prove the factum of clearance of the consignments may be fatal to the prosecution case. The petitioner, in all his communications, viz., Exs.P.1, P.2, P.4, P.5 and P.6, has unequivocally admitted that he has taken

delivery of the consignment and has even made payments upto Rs.1,90,000/. In fact, in the letter dated 20.07.2002 (Ex.P.5), the petitioner has stated as follows:

"... So, I request you to be kind enough and not to take any action in this regard. I am having dealing with your bank since inception and I will live up to your expectation in remitting the amount as above schedule..."

The petitioner has not denied issuance of Exs.P.1, P.2, P.4, P.5 and P.6 nor has he denied payment of Rs.1,90,000/- by him. He has only suggested to Narayanan (P.W.2) that the letters were obtained under coercion. This theory sounds ex facie ludicrous, because, Narayanan (P.W.2), the Branch Manager, is not a police officer to threaten and get the letter. In fact, Ex.P.1 was given by the petitioner on 15.09.2001 and the FIR was registered only on 26.09.2001. In fact, when he was questioned under Section 313 Cr.P.C., he has stated that his employee, who is no longer under him, had done this. In the light of such overwhelming materials against the petitioner, it cannot be stated that the findings of the Trial Court and the Appellate Court are perverse, warranting interference.

Ex consequenti, this criminal revision petition stands dismissed. The Trial Court is directed to secure the presence of the petitioner and commit him to prison to undergo the remaining period of sentence.

gya/cad

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
   Alandur.

2. - Do- Thro: The Chief Judicial Magistrate,
   Chengalpet.

3. The Additional District Judge
   (Fast Track Court No.I)
   Chengalpattu

4. The Inspector of Police,
   Pazhavanthangal POlice Station,
   Pazhavanthangal, Chennai.

5. The Superintendent,
   Central Prison,
   Puzhal, Chennai.

6.The Public Prosecutor
  High Court of Madras
  Chennai 600 104

+1cc to Mr.P.Jesur Moris Ravi, Advocate, SR.NO.8278

CRL.R.C.No.1159 of 2011

kak(28/02/2019)