

Bail Slip

The Petitioner/Accused viz., R.Senthil Kumar, was released on bail as per the order of this Court dated 05/09/2012 in CrI.MP.No.1 of 2012 in CrI.R.C.No.1082 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2019

PRONOUNCED ON : 25.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1082 of 2012

R.Senthil Kumar ..Petitioner/Accused

Vs.

R.Sreedhar ..Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 29.02.2012 passed in C.C.No.143 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 27.07.2012 passed in C.A.No.103 of 2012 on the file of the III Additional Sessions Court, Coimbatore.

For Petitioner : Mr.K.Mayilsamy
Amicus Curiae

For Respondent : Mr.B.Nedunchezhiyan

O R D E R
सत्यमेव जयते

This criminal revision has been filed seeking to set aside the judgment and order dated 29.02.2012 passed in C.C.No.143 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 27.07.2012 passed in C.A.No.103 of 2012 on the file of the III Additional Sessions Court, Coimbatore.

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

3. The facts of the case in brief are as under:

3.1 It is the case of the complainant that on 02.02.2010, the accused borrowed a sum of Rs.4,22,000/- as hand loan and towards the said liability, issued a cheque dated 21.07.2010 (Ex-P1) bearing No.253800 for the said amount; when the complainant presented the cheque, the same was returned unpaid with the endorsement "Insufficient Funds" on 03.08.2010, which was intimated to the complainant on 10.08.2010 vide return memo (Ex-P2); the complainant issued a statutory demand notice dated 25.08.2010 (Ex-P3), which was received by the accused on 27.08.2010 vide acknowledgement card (Ex-P4); the accused issued a reply notice dated 09.09.2010 (Ex-P5) disputing the debt.

3.2 Therefore, the complainant initiated a prosecution in S.T.C.No.80 of 2011, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), before the Judicial Magistrate Court No.VII, Coimbatore, which was transferred to the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore and renumbered as C.C.No.143 of 2011.

3.2 Before the trial Court, the complainant examined himself as PW1 and marked five exhibits.

3.3 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as DW1 and marked ten exhibits.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 29.02.2012 in C.C.No.143 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

3.5 The appeal in C.A.No.103 of 2012 filed by the accused was dismissed by the III Additional District and Sessions Court, Coimbatore, on 27.07.2012.

3.6 Challenging the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision under Section 397 r/w 401 Cr.P.C.

3.7 The accused filed this revision through Mr.T.Munirathnam Naidu, Advocate and obtained suspension of sentence and bail in M.P.No.1 of 2012 in CrI.R.C.No.1082 of 2012

vide order dated 05.09.2012, the relevant portion of which reads thus:

"7. Therefore, in view of the fact that the learned counsel for the petitioner has made an endorsement in the revision to the effect that he is arguing the matter only as against the sentence and also the fact that the petitioner has conceded to pay a sum of Rs.2,00,000/- directly to the respondent/complainant, this Court of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) directly to the respondent/complainant, by way of Demand Draft, by registered post with acknowledgement card and in proof of the same, he shall produce the postal acknowledgement before this Court on 10.10.2012 and he shall execute a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate (Fast Track Court Magisterial Level-2), Coimbatore, and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision. On failure to comply with any one of the conditions, the suspension of sentence and the bail granted today shall stand automatically cancelled.

9. For reporting compliance, post on 10.10.2012."

4. During the pendency of this case, Mr.T.Munirathinam Naidu, Advocate, passed away and the accused did not make any arrangement to engage another counsel.

5. On 15.10.2019, this Court passed the following order:
"On 03.10.2019, this Court passed the following order:

Though his matter is not listed today, since the police produced R.Senthil kumar (revision petitioner/accused) pursuant to the directions of this Court, the matter was taken up for hearing.

2. Mr.R.Ranganathan, Head Constable, 2178, Madukkarai Police Station, Coimbatore District, is present. He has produced R.Senthil Kumar (revision petitioner/accused) before this Court pursuant to the order dated 24.09.2019 passed by this Court.

3. R.Senthil Kumar (revision petitioner /accused) submitted that he has engaged Mr.K.Mayilsamy, Advocate (Enrolment No. 1731/2010) in the place of the earlier counsel Mr.T.Munirathnam Naidu, who had passed away.

4. Since notice has not been served on R.Sreedhar (respondent/complainant), this Court directs the Madukkarai Police, Coimbatore, to produce R.Sreedhar, S/o.K.K.Raman, 6/53, Harini Nivas, Krishnasamy Nagar, Narasimmapuram Extension, Kuniyamuthur Post, Coimbatore 641 008, before this Court on 15.10.2019 at 10.30 a.m.

5. Call on 15.10.2019 printing the name of Mr.K.Mayilsamy, Advocate (Enrolment No.1731/2010) for R.Senthil Kumar (petitioner/accused).

2. Today when the matter was taken up for hearing, Mr.K.Mayilsamy, Advocate (Enrolment No.1731 of 2010) submitted that R.Senthil kumar, revision petitioner/accused, requested him on 03.10.2019 to appear and therefore, he undertook to appear for hi. However, the revision petitioner has, till, date, not given him the vakalatnama and has also not contacted him. Thus, it appears that the revision petitioner/accused, after obtaining suspension of sentence and bail from this Court, is deliberately adopting dilatory tactics. Therefore, Court appoints Mr.K.Mayilsamy, Advocate (Enrolment No.1731/2010) as pro bono counsel for the revision petitioner/accused and a copy of the typed-set of papers is furnished to him.

3. Today Mr.Sridhar, respondent/complainant is present and he has engaged Mr.Nedunchezhiyan as his counsel in this case.

Post on 21.10.2019 finally for arguments."

6. Heard Mr.K.Mayilasamy, learned Amicus Curiae for the accused and Mr.B.Nedunchezhiyan, learned counsel for the complainant.

7. Mr.K.Mayilsamy, learned counsel for the accused submitted that both the Courts below have not appreciated the evidence of the accused (DW1) in the right perspective and had failed to note that the accused had discharged the burden under Section 139 of the NI Act.

8. Per contra, the learned counsel for the complainant refuted the submission made by the learned counsel for the accused.

9. This Court gave its anxious consideration to the rival submissions.

10. Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, 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 Cr.P.C. Section 401 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. conferring powers of an

1 (2004)7 SCC 659

appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 Cr.P.C., 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. It is the specific case of the accused that he had Savings Bank accounts in two Banks viz., Indian Overseas Bank, Kuniamuthur Branch and Canara Bank, Madukkarai Branch; he had signed in blank cheque leaves and had handed over the two cheque books to his staff, who had lost it; therefore, he sent a complaint dated 30.10.2009 (Ex-D5) to the Madukkarai Police Station and also sent letters dated 30.10.2009 to Indian Overseas Bank, Kuniamuthur Branch and Canara Bank, Madukkarai Branch (Ex-D1 & D3, respectively), asking the banks not to honour the cheques; the complainant has misused one of the cheques of Indian Overseas Bank, Kuniamuthur Branch and has initiated the prosecution.

12. The aforesaid defence of the accused has been rightly rejected by the Courts below and this Court has no reason to differ with them.

13. In the cross-examination, the accused has not denied the writings and signature in the impugned cheque (Ex-P1). Had the accused given instructions to the bank to stop payment, the bank would not have returned the cheque on the ground "Funds

Insufficient", but, would have returned the cheque on the ground "payment stopped". There is no material to show that the impugned cheque (Ex-P1) was also one of the cheque leaves that was lost by the accused. It may be apposite to extract the findings of the trial Court in paragraphs No.16 and 18 of the judgment:

"16. Further the accused had not approached his bank to enquire about the letter sent and as usual kept quiet, convincing himself that sending a notice or complaint to police is enough. Whether this cheque formed part of the series kept by the accused in his shop is not clarified. A new series of cheque book could have been obtained by the accused during the intervening 1 year period and then issued to the complainant for discharge of debt, as presumption is till in favour of the complainant. Further the accused sent letter that some cheques signed and kept in his shop were misplaced. So it could be taken to the advantage of the complainant, that this was not the cheque which was kept in accused shop during October 2009. Unless the accused is able to probablise that the cheque in this case was also kept in the shop, the sending of letters for stop payment or sending complaints to police will not suffice.

18. The complainant is not a stranger to the accused and they had nurtured good relations, until as per the accused the complainant sought for more money and accused insisted for verifying the accounts. The accused never comes up with a date or month when the relationship became sour. The accused refers "staffs" in his reply notice, but as DW1 deposes that the only staff who worked in his shop had died. So apart from the oral testimony of the accused and the documents submitted on his side Ex.D1 to D10, there is nothing to speak for the accused. But even the version put forward by him is unreliable and not acceptable as the action of a prudent man. The accused falters in his journey of rebutting the presumption raised and still standing in favour of the complainant."

The aforesaid findings cannot be said to be perverse or incorrect in the light of the evidence on record and in view of

the recent judgment of the Supreme Court in Uttam Ram Vs. Devinder Singh & another².

14. As held by the Supreme Court in Rangappa Vs Sri Mohan³, the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, which has not been done in this case.

15. This Court does not find any infirmity or perversity in the judgments and orders passed by the Courts below, warranting interference.

16. However, the learned counsel for the accused submitted that the accused is now admitted in the hospital and sought leniency in the sentence.

17. Accepting the submission made by the learned counsel for the accused, the conviction of the accused of the offence under Section 138 of the NI Act is confirmed, but, the substantive sentence of imprisonment for the said offence is reduced from one year simple imprisonment to eight months simple imprisonment.

In fine, this criminal revision is partly allowed. The trial Court is directed to secure the accused and commit him to prison, for undergoing the remaining period of sentence, if any. If any amount has been deposited by the accused either in the Appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs. The Registry is directed to return the original records to the Courts below concerned.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.

2 Crl.A.No.1545 of 2019 decided on 17.10.2019

3(2010) 11 SCC 441

2. The III Additional Sessions Judge,
Coimbatore.

3. The Chief Judicial Magistrate,
Coimbatore(for information).

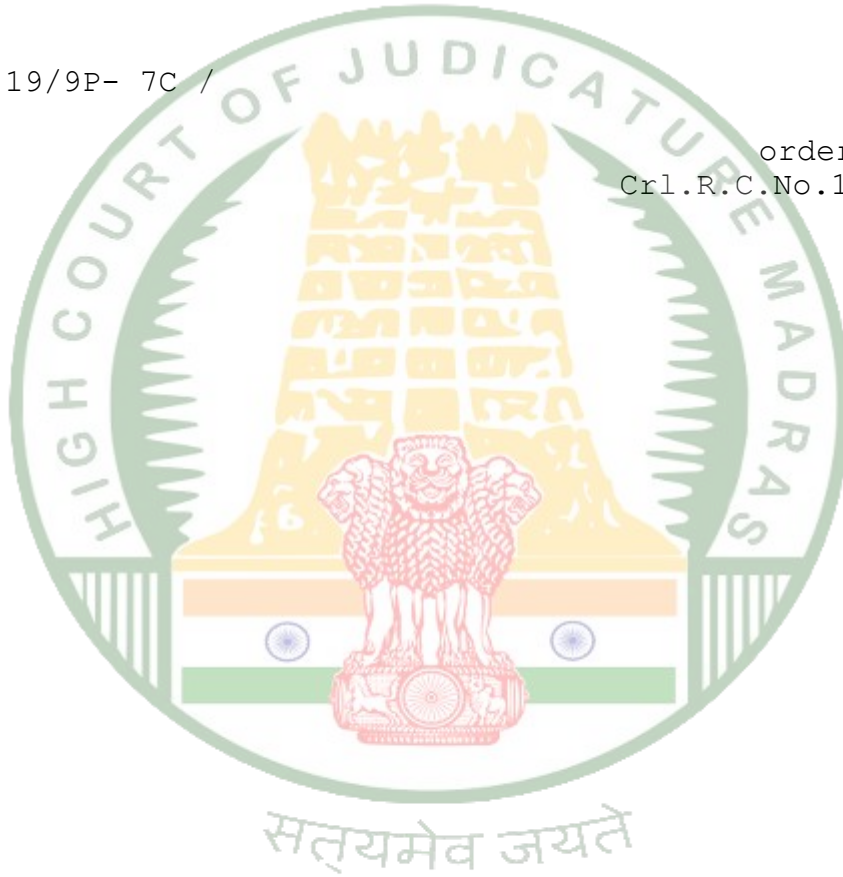
Copy to : The Deputy Registrar (Crl. Section),
Madras High Court,
Chennai - 104.

+1 cc to M/s.K.Myilsamy, Advocate Sr.No. 89555

+1 cc to M/s.B.Nedunchezhiyan, Advocate Sr.No.89553

AKM/03.12.19/9P- 7C /

order in
Crl.R.C.No.1082 of 2012



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