



BAIL SLIP

The Petitioner/Accused namely Narayanan, S/o.China karuppan was released on bail vide order made in CrI.MP.No. 1 & 3/12 in CrI.RC.No. 1090/12 dated 12/09/2012 passed by this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1090 of 2012

Narayanan

..Petitioner/Appellant/Accused

Vs.

M/s.Ahuja Continental Limited,  
Represented by its  
Area Manager & Power Agent,  
Ramesh,  
Patel Road, Ram Nagar,  
Coimbatore.

.. Respondent/Respondent/  
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 23.02.2010 passed in C.C.No.802 of 2005 on the file of the Judicial Magistrate Court No.VI, Coimbatore, confirmed by the judgment and order dated 23.06.2010 passed in C.A.No.41 of 2010 on the file of the I Additional District Court, Coimbatore.

For Petitioner : Mr.S.Shankar

For Respondent : Mr.R.Nagasundaram

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 23.02.2010 passed in C.C.No.802 of 2005 on the file of the Judicial Magistrate Court No.VI, Coimbatore, confirmed by the judgment and order dated 23.06.2010 passed in C.A.No.41 of 2010 on the file of the I Additional District Court, Coimbatore.

2. For the sake of convenience, the petitioner and the



respondent will be referred to as accused and complainant, respectively.

3. It is the case of the complainant that they are dealers of tyres and tubes; the accused had purchased tyres and tubes worth of Rs.4,67,000/-, towards which, he issued two cheques viz., cheque (Ex-P1) dated 27.04.2004 for a sum of Rs.27,374/- and cheque (Ex-P2) dated 29.05.2004 for a sum of Rs.25,292/-, drawn on ICICI Bank; when the complainant presented the said cheques, they were returned with the endorsement "Payment Stopped" vide bank's return memo (Ex-P3) dated 07.07.2004; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 03.08.2004; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.802 of 2005 before the Judicial Magistrate No.VI, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act (for brevity "the NI Act"), against the accused.

4. Before the trial Court, the complainant Ramesh, authorised representative of Ahuja Continental Limited, examined himself as PW1 and marked eight exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the allegations and did not give any explanation as to how the two cheques issued by him came into the hands of the complainant. On behalf of the accused, no witness was examined nor any document marked.

6. After a full-fledged trial, the trial Court, by judgment and order dated 23.02.2010, 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 three months simple imprisonment.

7. The appeal in C.A.No.41 of 2010 filed by the accused was dismissed by the I Additional District Court, Coimbatore, on 23.06.2010.

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

9. Heard Mr.S.Shankar, learned counsel for the accused and Mr.R.Nagasundaram, learned counsel for the complainant.

10. Before advertng to the rival submissions, it may be necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a



second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.<sup>1</sup>]. Very recently, in Bir Singh vs. Mukesh Kumar<sup>2</sup>, the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. .... "

(emphasis supplied)

11. The learned counsel for the accused submitted that the complainant has failed to prove the debt and the impugned cheques were issued only as security.

12. Ramesh (PW1), in his evidence, has stated about the purchase of tyres and tubes by the accused for a sum of Rs.4,67,000/-, the issuance of the impugned cheques, their presentation and dishonour, the issuance of the statutory demand notice and the failure of the accused to comply with the demand.

13. In the cross-examination of Ramesh (PW1), it has been suggested that the accused was purchasing tyres and tubes from the complainant and as security, the cheques were given and the complainant has misused the cheques, which suggestion he denied.

14. On the contrary, the complainant has marked a letter (Ex-P8) dated 24.05.2003 that was written by the accused to the complainant, wherein, it has been clearly stated that a sum of Rs.4,24,000/- was due and after deducting some discounts, ten cheques were issued by the accused towards the dues.

15. The accused has not denied the execution of the letter (Ex-P8) and the issuance of the impugned cheques. The accused has not placed any material to show that the cheques were given as advance security and the complainant had not made any supplies.

16. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability as held by the Supreme Court in Rangappa Vs Sri Mohan<sup>3</sup>, even that has not been done in this case.

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1(2004) 7 SCC 659

2(2019) 4 SCC 197

3 (2010) 11 SCC 441



17. In view of the foregoing discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, *ibid.*, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1090 of 2012. 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, as the case may be.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.VI,  
Coimbatore
2. The I Additional District Judge,  
Coimbatore.
3. The Deputy Registrar,  
(Crl.Side)  
Madras High Court,  
Chennai - 104.

} with a direction to return the  
original records to the Courts  
below concerned

Crl.R.C.No.1090 of 2012

RSV(CO)  
GN(07/01/2020)