

Bail Slip

The Petitioner/Accused, namely N.Sadhasivam male S/o.Natesan has released on bail as per order dated 06.09.2012 in MP.NO.1/12 IN CRL.R.C.No.1113 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 18.11.2019
PRONOUNCED ON : 21.11.2019
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1113 of 2012

N.Sadhasivam

... Petitioner/
Accused

Vs

S.Ramesh

... Respondent/
Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 26.06.2012 passed by the Principal Sessions Judge, Erode in C.A.No.138 of 2011 confirming the judgment and order dated 20.10.2011 passed by the Chief Judicial Magistrate, Erode in C.C.No.148 of 2011.

For Petitioner : Mr.N.Manokaran

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 26.06.2012 passed by the Principal Sessions Judge, Erode in C.A.No.138 of 2011 confirming the judgment and order dated 20.10.2011 passed by the Chief Judicial Magistrate, Erode in C.C.No.148 of 2011.

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, on 16.02.2009, the accused borrowed a sum of Rs.6,00,000/- as hand loan for his business purposes and on the same day, issued a post-dated cheque bearing the date 16.03.2009 (Ex.P1) for the said amount; when the complainant presented the cheque on 19.03.2009, it was returned on 20.03.2009 with the endorsement "funds insufficient" vide return memo (Ex.P2); the complainant

issued a statutory demand notice dated 08.04.2009 (Ex.P3), which was not received by the accused and the same was returned by the postal department with the endorsement "not claimed returned to sender" on 18.04.2009 (Ex.P5); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.148 of 2011 before the Chief Judicial Magistrate, Erode against the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

4. On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

5. To prove the case, the complainant examined himself as P.W.1 and marked Exs.P1 to P6.

6. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he did not offer any explanation as to the circumstances under which, the cheque signed by him came into the possession of the complainant. No witness was examined on the side of the accused nor any document marked.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.10.2011 in C.C.No.148 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for one year and pay Rs.6,00,000/- being the cheque amount as compensation to the complainant, in default to undergo simple imprisonment for one month. The appeal in C.A.No.138 of 2011 that was filed by the accused was dismissed by the Sessions Court, Erode on 26.06.2012. Challenging the concurrent findings of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8. Heard Mr.N.Manokaran, learned counsel for the accused. Though notice was served on the complainant, he has not entered appearance.

9. It is trite 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. (2004) 7 SCC 659]. Very recently, in Bir Singh Vs. Mukesh Kumar [(2019) 4 SCC 197], 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)

10. The learned counsel for the accused submitted that the complainant has not proved the debt, by filing any pronote or any other document and that, the complainant has also not filed his income tax returns.

11. This Court perused the evidence of the complainant (P.W.1). The complainant (P.W.1), has stated about the loan taken by the accused, issuance of the impugned cheque, presentation of the impugned cheque, its dishonour, issuance of statutory demand notice, return of the unclaimed cover and the failure of the accused to make the payment.

12. In the cross-examination, the complainant (P.W.1) has stated that he is into textile business for over 20 years and the name of his establishment is Lalit Textiles Trading. He has also stated that he knows the accused for the past 10 years and that, the accused is into weaving business and commission agent and is residing in Indira Nagar. When the complainant was asked as to whether he pays income tax, he has stated that he does not. Thereafter, it was merely suggested to the complainant that the accused had not issued the cheque at all, which suggestion, he denied. Apart from this, there is absolutely no cross-examination of the complainant.

13. Even in the 313 Cr.P.C. statement, the accused has not given any good reason, as to how, the cheque signed by him has gone into the possession of the complainant. Just because, the complainant was not paying income tax, it cannot be inferred that he had not given any loan to the accused. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, even that has not been done in this case. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference.

In the result, this Criminal Revision is dismissed being devoid of merits. The trial Court is directed to secure the accused and commit him in prison to undergo 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, as the case may be. It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.* before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part

of the records in Crl.R.C.No.1113 of 2012. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gya

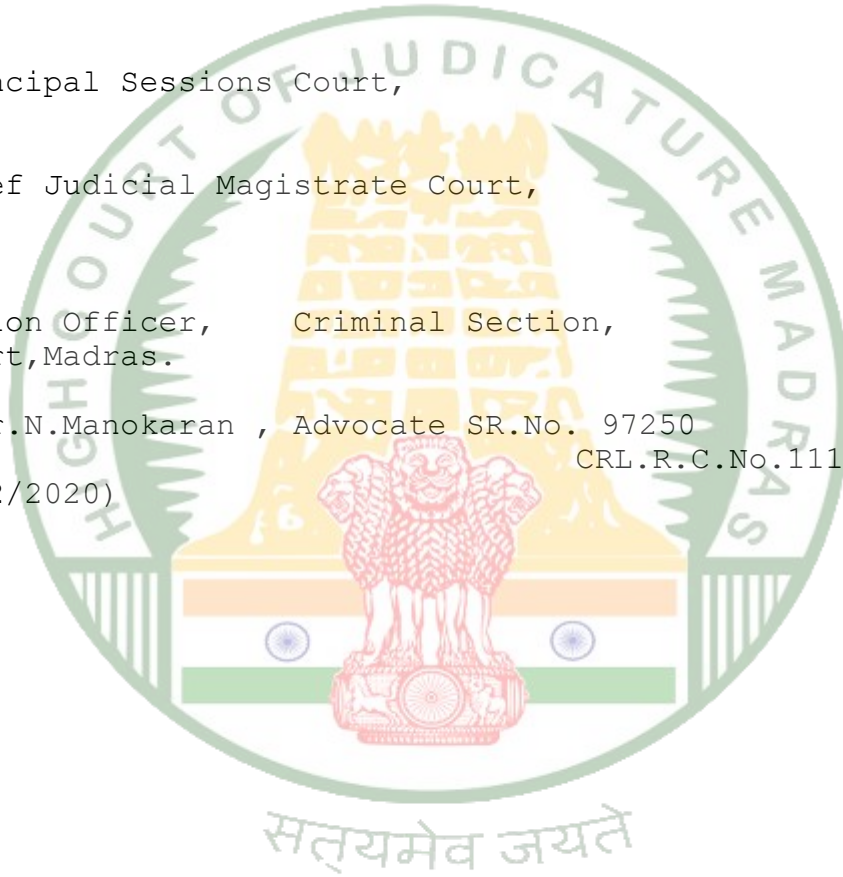
To

1.The Principal Sessions Court,
Erode.

2.The Chief Judicial Magistrate Court,
Erode.

Copy to:
The Section Officer, Criminal Section,
High Court,Madras.

+1cc to Mr.N.Manokaran , Advocate SR.No. 97250
CRL.R.C.No.1113 of 2012
A.SK(10/02/2020)



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