



Bail Slip

The Appellant herein/Accused namely M.K.Manikandan, S/o Kuppusamy was directed to be released on bail as per order of this Court dated 07/09/2012 in CrI.MP No.1/2012 in CrI RC No.1120 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2019

DELIVERED ON: 27.11.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
CrI.R.C.No.1120 of 2012

M.K.Manikandan ... Petitioner /Accused

Vs.

Ashok Kumar ... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C against the judgment of the II Additional District Court, Salem dated 19.06.2012 made in C.A.No.63 of 2011 confirming the conviction and sentence imposed in judgment by the Judicial Magistrate III, Salem dated 29.06.2011 in S.T.C.No.367 of 2009.

For Petitioner : Mr.M.Guruprasad

For Respondent : No appearance
ORDER

This Criminal Revision has been preferred challenging the judgment and order dated 19.06.2012 passed by the II Additional District Court, Salem in C.A.No.63 of 2011 confirming the conviction and sentence imposed by the Judicial Magistrate III, Salem in S.T.C.No.367 of 2009 dated 29.06.2011.

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

3. It is the case of the complainant that the accused was his close friend and in the year 2007, the accused borrowed Rs.5,00,000/- and executed a promissory note. The accused gave four cheques for Rs.1,00,000/- each, dated 04.06.2008 (Ex.P1),



09.07.2008 (Ex.P2) and 06.08.2008 (Ex.P3) and 10.09.2008 (Ex.P4), which when presented by the complainant, were returned unpaid with the endorsement "Funds Insufficient". The complainant issued a statutory demand notice dated 07.11.2008, for which the accused issued a reply dated 14.11.2008 (Ex.P11) repudiating the debt. Therefore, the complainant initiated a prosecution in S.T.C.No.367 of 2009 under Section 138 of the Negotiable Instruments Act, 1881 before the Judicial Magistrate III, Salem against the accused.

4. The complainant examined himself as PW1 and marked Exs.P1 to P11. The accused examined himself as DW1 and marked Exs.D1 to D6. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same.

5. After considering the evidence on record and after hearing either side, the trial Court by judgment and order dated 29.06.2011 in S.T.C.No.367 of 2009 convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo 10 months simple imprisonment and fine of Rs.1000/-, in default to undergo 2 months simple imprisonment. The appeal in C.A.No.63 of 2011, that was filed by the accused, was dismissed by the II Additional District Judge, Salem on 19.06.2012. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision before this Court.

6. Heard learned counsel for the petitioner/accused.

7. 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 Kuldeep 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)

8. The complainant in his evidence has stated about the borrowal of Rs.5,00,000/-, issuance of four cheques by the accused, the dishonour, issuance of legal notice and receipt of the reply notice from the accused. The accused in his defence



9.Mr.M.Guruprasad, learned counsel appearing for the petitioner/accused took this Court through the reply notice (Ex.P11) and submitted that even at the earliest point of time, the accused has given an explanation as to how the four cheques came into the custody of the complainant.

11. Be that as it may, getting public employment through bribery, is illegal and therefore, a contract founded on illegality between the accused, Gunasekaran and Vijayasankar is unenforceable. The complainant's case is simple and straight. He has stated that the accused borrowed Rs.5,00,000/- and gave four cheques totalling Rs.4,00,000/-.

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amount. The complainant has clearly stated that in February 2007, the accused had borrowed the money and had issued four post-dated cheques. Had the cheques been obtained by deceit from the accused, he would have stopped payment. That was not done in this case. Though the accused can discharge the burden by preponderance of probability, as held by the Hon'ble Supreme Court in Rangappa Vs. Sri Mohan reported in (2010) 11 SCC 4413, even this has not been done in this case by the accused. More recently, the Hon'ble Supreme Court in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019) has held as follows :

"20.The Trial Court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

In the result, this revision petition is partly allowed. The conviction of the accused stands confirmed but, the sentence is reduced from 10 months simple imprisonment to five months simple imprisonment. The period already undergone shall be set off. The trial Court is directed to secure the accused and commit him in prison for serving the rest of the sentence. It is always open to the parties to file an application under Section 147 of the NI Act for compounding the offences even after he is taken into custody. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Court,
Salem.



2. The Judicial Magistrate III,
Salem.

3. Do- Thro' The Chief Judicial Magistrate,
Salem.

4. The Deputy Registrar,
Criminal Section,
High Court, Madras. } with a direction to send
the original records to the
two Courts below forthwith.

+1cc to Mr.M.Guruprasad, Advocate Sr.99195

Cr1.R.C.No.1120 of 2012

ev[col]
srg 06/01/2020