

Bail Slip

The Petitioner/Accused Viz., J.Suresh, S/o.B.L.Joghee be and hereby was directed to be released on bail as per order of this Court, dt.17-9-2012 and made in M.P.No.1 of 2012 in CrI. RC.1157/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

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

CrI.R.C.No.1157 of 2012

J.Suresh .. Petitioner /Accused

Vs.

Thiru K.S.Rajan .. Respondent/complainant

Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge of the Nilgiris of Udhagamandalam in C.A.No.27 of 2010 dated 12.06.2012 confirming the judgment passed by the learned Judicial Magistrate, Kotagiri, the Nilgiris in S.T.C.No.916 of 2006 dated 04.09.2010.

For Petitioner : Mr.A.Bobbli

For Respondent : Notice served/No appearance

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 12.06.2012 passed by the Sessions Judge, Nilgiris at Udhagamandalam in C.A.No.27 of 2010 confirming the conviction and sentence dated 04.09.2010 passed by the Judicial Magistrate, Kotagiri, Nilgiris in S.T.C.No.916

of 2006.

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 for the debt of Rs.2,00,000/-, the accused issued a cheque dated 01.09.2006, which when presented by the complainant was returned on 07.09.2006 with the endorsement "Funds Insufficient"; the complainant issued a statutory notice dated 14.09.2006, which was received by the accused on 22.09.2006; since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.916 of 2006 before the Judicial Magistrate, Kotagiri under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

4. The complainant examined himself as PW1 and marked Exs.P1 to P5. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. On the side of the accused, three witnesses, Susindran (DW1), Sankar (DW2) and K.S.Kumar (DW3) were examine, but no documents were marked.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.09.2010, in S.T.C.No.916 of 2006, convicted the accused and sentenced him to undergo one year simple imprisonment and fine of Rs.1000/-, in default to undergo 6 months simple imprisonment. The appeal in C.A.No.27 of 2010, that was filed by the accused, was dismissed by the Sessions Court, Nilgiris on 12.06.2012.

6. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision petition.

7. Notice has been served on the respondent/complainant. Since the respondent did not enter appearance, his name is printed in the cause list.

8. Heard Mr.A.Bobblie, learned counsel for the petitioner/accused, who submitted that the petitioner/accused died on 15.07.2013 in support of which he submitted a copy of the Death Certificate.

9. The death of the accused will not result in abatement of the revision petition and therefore, it is imperative for this Court to peruse the records and give a finding.

10. 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)

11. A perusal of the records shows that the complainant (PW1) is a practicing advocate in the Nilgiris. The complainant has not even pleaded about the debt in his complaint. Therefore, it is necessary to extract the relevant portion from the complaint, which reads as follows:

"The case of the complainant is that the complainant submits that towards the discharge of the existing liability, the accused herein at Kotagiri has drawn and issued a cheque bearing number 206806 drawn on Union Bank of India, Coonoor Branch for a sum of Rs.2,00,000/- (Rupees two lakhs only) in favour of he complainant on 01.09.2006."

12. Even in the evidence, the complainant has not stated anything about the debt. He has simply stated that for an existing liability, the cheque was given. Though the presumption under Sections 118 and 139 of the Negotiable Instruments Act are available, it is necessary for the complainant to atleast plead the debt. It may not be necessary for the complainant to prove the debt in view of the two presumptions.

13. That apart, the accused has examined two advocates as DW1 and DW2 to disprove the case of the complainant. Both the Courts have failed to properly appreciate the aforesaid facts.

In the result, this revision petition is allowed and the judgment and order dated 12.06.2012 passed by the Sessions Judge, Nilgiris at Udhagamandalam in C.A.No.27 of 2010 and conviction and sentence passed by the Judicial Magistrate,

Kotagiri, Nilgiris dated 04.09.2010 in S.T.C.No.916 of 2006 are set aside. The accused is acquitted of all charges. Fine, if any, paid shall be refunded to the legal heirs of the accused.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Sessions Judge, Nilgiris
Udhagamandalam

2.The Judicial Magistrate, Kotagiri,
Nilgiris

3.-do-thor'The Chief Judicial Magistrate,
Nilgiris, Uthagamandalam.

4.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.Bobblie, Advocate SR.96909

Cr1.R.C.No.1157 of 2012

PA(CO)

CB(30/12/2019)