Bail Slip

The Petitioner herein/Accused namely Nagappan, S/o.Semmalai was directed to be released on bail vide Order dated 17/09/2012 made in Crl.MP.No.1/2012 in Crl RC.No.1159/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM:

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

Crl.R.C.No.1159 of 2012

Nagappan
S/o.Semmalai .. Petitioner /Accused

Vs.

K.Kandasamy
Proprietor,
M/s.Gowri Sankar Textiles,
Ilampillai, Salem District. .. Respondent/Accused

Criminal Revision filed under Section 397 and 401 Cr.P.C against the judgment of the learned III Additional District and Sessions Court, Salem in Crl.A.No.103 of 2011 dated 14.08.2012 confirming the judgment of the learned Judicial Magistrate No.2, Sankari in S.T.C.No.828 of 2008 dated 20.10.2011.

For Petitioner : Ms.T.Gayathri
for Mr.C.Kulanthaivel

For Respondent : Ms.R.Ammu
for Mr.R.Ezhilarasan

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JUDGMENT

This Criminal Revision has been preferred challenging the judgment and order dated 14.08.2012 passed by the III Additional District and Sessions Court, Salem in Crl.A.No.103 of 2011 confirming the judgment of Judicial Magistrate No.2, Sankari in S.T.C.No.828 of 2008 dated 20.10.2011.

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

3. It is the case of the complainant that he is doing business in textiles and the accused used to purchase materials from him. During the course of such business transaction, on 08.02.2008, the accused purchased goods worth Rs.2,00,000/- and gave a cheque for Rs.50,000/- dated 08.02.2008 (Ex.P1). When the complainant started demanding payment, on 15.04.2008, the accused gave three cheques for Rs.50,000/- each, (Exs.P2, P3 and P4). The complaint presented all the four cheques (Exs.P1, P2, P3 and P4) on 15.04.2008 and the cheques were returned unpaid with the endorsement 'insufficient funds' vide return memo dated 16.04.2008 (Exs.P7, P8, P9 and P10). Therefore, the complainant issued a statutory demand notice on 02.05.2008 (Ex.P5), which was received by the accused on 09.05.2008 vide postal acknowledgment card (Ex.P6). Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.828 of 2008 before the Judicial Magistrate II, Sankari under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

4. The complainant examined himself as PW1 and marked Exs.P1 to P11. When the accused was questioned under Section 313 Cr.P.C, he denied the allegations. The accused examined himself as DW1 and no documents were marked on his side either.

5. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 20.10.2011 convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay the amount covered by four cheques i.e., Rs.2,00,000/- as compensation to the complainant within a period of two months. The appeal in C.A.No.103 of 2011 that was filed by the accused was dismissed by the III Additional District and Sessions Judge, Salem on 14.08.2012. Challenging the concurrent findings of the two courts below, the accused has filed the present revision petition under Section 397 r/w.401 Cr.P.C.

6. Heard Ms.T.Gayathri, learned counsel for the accused and Ms.R.Ammu, learned counsel for the complainant.

7. Learned counsel for the accused submitted that the complainant has failed to prove the debt satisfactorily and has not produced any document to show that the accused had purchased the textiles on 08.02.2008. She took this Court through the evidence of the complainant and the answers given by him in the cross-examination.

8. Per contra, learned counsel for the complainant refuted the contentions.

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

10. Before adverting to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder :

> "27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

10.1. 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. [(2004)7 SCC 659]:

> "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 CrPC. Section 401 CrPC 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 CrPC 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 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, 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."

10.2. This legal principle has been reiterated very recently by the Supreme Court in Bir Singh Vs Mukesh Kumar [(2019) 4 SCC 197], wherein, the Supreme Court formulated the following question of law :

> "(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in 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. The answer to the first question is therefore, in the negative."

11. In this case, the accused has not denied his signature and writings in the impugned cheques. It is the defence of the accused that he was not doing textile business, but was only doing Real Estate Business; on 07.01.2008 he had gone to the house of the complainant in connection with a land deal and had left a bag containing signed cheque leaves while proceeding to inspect the land under negotiation; thereafter he forgot about it, but on realizing that he had lost the cheque book, gave a police complaint, but to no avail. The accused has further stated in his evidence that he came to know about the presentation of the four cheques only when he received the summons from the Court.

12. The complainant in his cross-examination has clearly stated that the accused used to purchase textiles from him over a period of time and he has accounts for it. He has also stated that even in respect of the purchases that were made by the accused on 08.02.2008, he has the accounts. Of course, he did not file those account books as exhibits. In the opinion of this Court that cannot be held as fatal especially in the light of the non-repudiation of the signature by the accused in the four cheques.

13. According to the accused, he left the cheque book in the house of the complainant on 07.01.2008 and that complainant had misused the cheques. Strangely, the accused did not give any letter to his bank for 'stop payment'. He has admitted that in the cross-examination. In the chief examination he stated that he came to know about the misuse of the cheques by the complainant only when he received the summons, but in the cross-examination he admitted the receipt of a statutory demand notice (Ex.P5) when he was confronted with the signature in the postal

acknowledgment card (Ex.P6). Both the courts below have appreciated the evidence on record in the proper perspective and this Court does not find any infirmity in the findings of the two Courts below warranting interference. Though the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability as held by the three Judges Bench of the Supreme Court in Rangappa Vs. Sri Mohan reported in (2010) 11 SCC 4413, the accused in this case has failed to do even that. 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.
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> 21. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act which reads as under:
>
> > "138. Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall…. "

In the result, this Criminal Revision is dismissed. 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. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

gpa

To

1. III Additional District and Sessions Court,
Salem

2. The Judicial Magistrate II, Sankari

3.-Do- Thro' The Principal Sessions Judge, Salem.

4.-Do- The Chief Judicial Magistrate, Salem.

5.The Deputy Registrar, Criminal Section,
High Court, Madras.
(with a direction to send the Original records to the two Courts below forthwith.)

6.The Public Prosecutor,
High Court, Madras 500 104.

Copt to: The Section Officer,
E.R Section,
High Court, Madras.

+1CC to Mr.R.Ezhilarasan, Advocate, SR.No.91199.
+1CC to Mr.C.Kulanthaivel, Advocte, SR.No.91197.

Crl.R.C.No.1159 of 2012

RSI(SO)
CSR(11/12/2019)