

Bail Slip

The Petitioner/Accused namely Raghavan, aged about 49 years, S/o Late Kulandai was directed to be released on bail as per order of this Hon'ble Court dated 03.10.2012 in MP No.1 of 2012 in Crl.R.C.No.1205 of 2012 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1205 of 2012

Raghavan ... Petitioner/ Accused

Vs

Giridharan ... Respondent/Complainant

Criminal Revision preferred under Section 397 and Section 401 Cr.P.C. to set aside the judgment and order dated 21.06.2012 passed by the III Additional District and Sessions Judge, Thiruppathur, Vellore in C.A.No.46 of 2011 confirming the judgment and order dated 08.02.2011 passed by the Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District in C.C.No.94 of 2010.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.M.Devaraj

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 21.06.2012 passed by the III Additional District and Sessions Judge, Thiruppathur, Vellore in C.A.No.46 of 2011 confirming the judgment and order dated 08.02.2011 passed by the Additional District Munsif-cum-Judicial Magistrate, Ambur in C.C.No.94 of 2010.

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, he made investments in the construction business of the accused and between 10.04.2009 and 16.01.2010, the complainant had invested

Rs.6,58,568/-; on account of differences of opinion, they parted company and both of them entered into a memorandum of understanding dated 16.01.2010 (for brevity "MOU"), in which, the liability was determined at Rs.3,50,000/-; the accused issued a cheque dated 16.04.2010 (Ex.P1) for Rs.3,50,000/-, which was presented by the complainant, a month later on 28.05.2010, returned unpaid with the endorsement "stop payment" vide bank memo (Ex.P2); the complainant issued a statutory demand notice dated 09.06.2010 (Ex.P3), which was received by the accused on 15.06.2010, as could be seen from the postal acknowledgment card (Ex.P4); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.94 of 2010 before the Additional District Munsif-cum-Judicial Magistrate, Ambur 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 also examined one Rajaratnam, Bank Manager and Saravanan, the brother-in-law of the complainant as P.W.2 and P.W.3 respectively. On the side of the complainant, Exs.P1 to P7 were marked. In the cross-examination of the complainant, the defence marked Exs.D1 to D4.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and did not offer any explanation, as to the circumstance under which, the cheque issued by him came into the hands 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 08.02.2011 in C.C.No.94 of 2010, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo 12 months simple imprisonment and pay a fine of Rs.2,000/-, in default to undergo 3 months simple imprisonment. The appeal in C.A.No.46 of 2011 that was filed by the accused was dismissed by the III Additional District and Sessions Judge, Thiruppathur, Vellore on 21.06.2012. Challenging the concurrent findings of fact of the two Courts below, the accused has filed the present criminal revision under Section 397 read with Section 401 Cr.P.C.

8.Heard Mr.E.Kannadasan, learned counsel for the accused and Mr.M.Devaraj, learned counsel for the complainant.

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 complainant, who examined himself as P.W.1 has spoken about the business transaction he had with the accused, the investments made by him in the business, the circumstance under which both of them decided to part company, the MOU dated 16.01.2010 entered into between them, in which, the accused had agreed to pay Rs.3,50,000/- as full and final settlement, the issuance of the impugned cheque (Ex.P1), its presentation and dishonour on the ground of stop payment, the issuance of the notice and the failure of the accused to comply with the demand.

11.Learned counsel for the accused submitted that even prior to the issuance of statutory demand notice by the complainant, the accused had sent a legal notice dated 11.05.2010 to the complainant, alleging that he was forced to enter into the agreement on 16.01.2010 and that, the complainant had taken a blank, but, signed cheque and that, he should return it.

12.The defence of the accused in the cross-examination of the complainant is also on these lines. However, the complainant has denied these allegations and he has examined D.W.3, to show the circumstances, under which, the MOU dated 16.01.2010 was entered into. The MOU dated 16.01.2010 has been marked as Ex.P7. Apart from suggesting that the MOU was entered into under coercion, the accused had not placed any credible material in support of this defence. The MOU was entered into on 16.01.2010 and at that time itself, the accused had given the post-dated cheque, bearing the date 16.04.2010, which, the complainant presented only on 28.05.2010. The notice (Ex.D1) was sent by the accused only on 11.05.2010, which is four months

after the MOU was signed. Both the Courts below have appreciated the evidence on record in the right perspective and this Court has no good reasons to disagree. Hence, the conviction of the accused of the offence under Section 138 of the NI Act has to be sustained.

13.At this juncture, learned counsel for the accused submitted that the accused is ready and willing to pay the cheque amount, if three months time is granted. Learned counsel for the complainant submitted that if the accused pays the cheque amount, the matter can be compounded under Section 147 of the NI Act. In the affidavit dated 26.11.2019 filed before this Court, the accused has stated as follows :

"3.I submit that the respondent filed a private complaint under Section 138 of the NI Act (sic) before the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District claiming for a sum of Rs.3,50,000/- payable by me.

4.I submit that the above case came up for final hearing on 19.11.2019, on that day, I expressed my willingness to pay the cheque amount of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) to the respondent within a period of 3 months from today i.e. 26.11.2019. Further the respondent also accept my proposal and to receive the cheque amount from me in the above said period."

14.In view of the above, this Court passes the following order :

- i. The conviction imposed on the accused for the offence under Section 138 of the NI Act stands confirmed.
- ii. The accused shall deposit Rs.3,50,000/- on or before 30.03.2020 before the trial Court and on such deposit, the offence will stand automatically compounded under Section 147 of the NI Act and the conviction and sentence imposed on the accused will stand set aside.
- iii. In the event of the accused not depositing the said sum on or before 30.03.2020, the trial Court shall issue warrant to secure the accused and commit him to prison for undergoing the sentence imposed by the trial Court.

The Registry is directed to transmit the original records, to the respective Courts forthwith.

In the result, the Criminal Revision is disposed of.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District and Sessions Court
Thiruppathur, Vellore

2.The Additional District Munsif-cum-Judicial Magistrate
Ambur, Vellore District.

3.The Deputy Registrar
Criminal Side
High Court, Madras.

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

+1cc to Mr.M.Devaraj, Advocate Sr.100033

+1cc to Mr.E.Kannadasan, Advocate Sr.100058

CRL.R.C.No.1205 of 2012

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srg 08/01/2020