



Bail Slip

That the accused namely T.A.Kodhandaraman,/Accused S/o.T.Ayyamudali was released on bail in MP.No.1 of 2012 in CrI.RC.No.1217 of 2012 order dated 27/09/2012 as against in CA No.75 of 2009 on the file of the IIIrd Additional Sessions Court (City Civil Court) Chennai dated 20/10/2010 against CC No.441/05 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai dated 06/04/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1217 of 2012

T.A.Kodhandaraman

..Petitioner/Appellant/Accused

Vs.

Gyan Chand

.. Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 06.04.2009 passed in C.C.No.441 of 2005 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai, confirmed by the judgment and order dated 20.10.2010 passed in C.A.No.75 of 2009 on the file of the III Additional Sessions Court (City Civil Court), Chennai.

For Petitioner : Mr.M.Prabakar

For Respondent : Mrs.Greetha Senthilkumar

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 06.04.2009 passed in C.C.No.441 of 2005 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai, confirmed by the judgment and order dated 20.10.2010 passed in C.A.No.75 of 2009 on the file of the III Additional Sessions Court (City Civil Court), Chennai.



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 04.04.2004, the accused borrowed from him a sum of Rs.1,00,000/- and executed a promissory note (Ex-P1); when the complainant demanded repayment of the amount with interest, the accused gave a cheque (Ex-P2) dated 04.10.2004 for a sum of Rs.1,12,000/-; when the complainant presented the cheque (Ex-P2), it was returned unpaid with the endorsement "Insufficient Funds" vide bank's return memo (Ex-P3); therefore, the complainant issued a statutory demand notice (Ex-P5) dated 17.11.2004, which was received by the accused vide postal acknowledgment card (Ex-P6); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.441 of 2005 before the VIII Metropolitan Magistrate, George Town, Chennai, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

4. Before the trial Court, the complainant examined himself as PW1 and marked seven exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as DW1, but, did not mark any document.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.04.2009 in C.C.No.441 of 2005, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo three months simple imprisonment and to pay a sum of Rs.1,12,000/- as compensation to the complainant.

7. The appeal in C.A.No.75 of 2009 filed by the accused was dismissed by the III Additional Sessions Court (City Civil Court), Chennai, on 20.10.2010.

8. Challenging the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

9. Heard Mr.M.Prabakar, learned counsel for the accused. Though notice was served on the complainant, he did not enter appearance. Therefore, this Court appointed Mrs.Greetha Senthilkumar (Enrollment No.1422 of 2004), to appear for the complainant.



10. Before advertng to the rival submissions, it may be necessary to state here 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.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², 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. On 05.11.2019, this Court passed the following order:

"During the hearing, Mr.M.Prabakar, learned counsel for the petitioner/accused submitted that from the beginning, the petitioner has been ready and willing to pay the cheque amount of Rs.1,12,000/- to the complainant, but, the complainant was refusing to receive the same. He also submitted that the petitioner would deposit the said amount even now in order to show his bonafide.

2. If so, the petitioner is directed to deposit a sum of Rs.1,25,000/- (Rs.1,12,000/- towards the cheque amount and Rs.13,000/- towards cost) before the trial Court to the credit of C.C.No.441 of 2005 within two weeks from today.

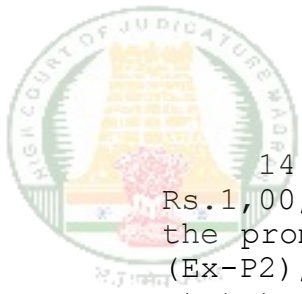
Post the matter on 22.11.2019, under the caption "for reporting compliance".

12. Today, when the matter was taken up for hearing, Mr.M.Prabakar, learned counsel for the accused submitted that the accused has deposited a sum of Rs.1,25,000/- before the trial Court vide receipt No.161357 dated 18.11.2019. He has also filed a memorandum of compliance enclosing a photocopy of the receipt.

13. This Court carefully perused the evidence and other records.

1(2004) 7 SCC 659

2(2019) 4 SCC 197



14. The complainant has spoken to about the loan of Rs.1,00,000/- that was taken by the accused, the execution of the promissory note (Ex-P1), the issuance of the impugned cheque (Ex-P2), its presentation and dishonour, the issuance of the statutory demand notice (Ex-P5) and the failure of the accused to comply with the demand.

15. The accused, in his evidence, has stated that he had taken loan from the father of the complainant and given the impugned cheque (Ex-P2) to the father of the complainant. He has further stated that he had discharged the loan, despite which, the father of the complainant had handed over the cheque (Ex-P2) to the complainant herein for filing the present prosecution.

16. The fact remains that the accused has executed the promissory note, which has been marked as Ex-P1. The accused has not given any instructions to the bank to stop payment. After the cheque (Ex-P2) was dishonoured, the complainant issued the statutory demand notice (Ex-P5), for which, the accused had not given any reply. Except the statement of the accused that he had taken a loan from the complainant's father and had given the impugned cheque (Ex-P2) as security, no other credible materials have been produced before this Court, in support of his defence.

17. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability as held by the Supreme Court in Rangappa Vs Sri Mohan³, even that has not been done in this case.

18. In view of the aforesaid discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference. However, taking into consideration the fact that the accused has deposited the sum of Rs.1,25,000/- in the trial Court, this Court is of the view that interests of justice will be served if the substantive sentence of imprisonment is modified.

In the result, this criminal revision is partly allowed by confirming the conviction of the accused for the offence under Section 138 of the NI Act and the substantive sentence of three months simple imprisonment is set aside. The accused is directed to pay a fine of Rs.5,000/- before the trial Court, within a period of two weeks from the date of receipt of a copy of this order, in default to undergo one month simple imprisonment. The complainant will be entitled to withdraw the sum of Rs.1,25,000/- that has been deposited by the accused before the trial Court. The Tamil Nadu State Legal Services Authority,



Chennai, is directed to pay a sum of Rs.10,000/- as remuneration to Mrs.Greetha Senthilkumar (Enrollment No.1422 of 2004), Advocate.

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Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

nsd

To

1. The VIII Metropolitan Magistrate,
George Town, Chennai.
 2. The III Additional Sessions Judge,
(City Civil Court), Chennai.
 3. The Member Secretary,
Tamil Nadu State Legal Services Authority,
North Fort Road,
High Court Campus,
Chennai - 600 104.
 4. The Deputy
(Crl.Side)
Madras High
Chennai - 104.
- } Registrar, with a direction to return
the original records to the Courts
Court, below concerned

+1cc to Mrs.Greetha Senthilkumar, Advocate SR.No.98344

+1cc to Mr.M.Prabakar, Advocate SR.No.97700

Crl.R.C.No.1217 of 2012

RJ(CO)
GMY(28/11/2019)