

Bail Slip

The Petitioner/Accused namely J.Saravnan, S/o.Jaganathan, aged about 34 years to be and hereby released on bail as per order of the Hon'ble Court dated 08/10/2012 in CrI.MP.No.1 of 2012 in CrI RC.No.1253 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2019

PRONOUNCED ON : 15.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1253 of 2012

J.Saravanan ... Petitioner/Appellant/
Accused

Vs.

N.Ramamoorthy ... Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 06.07.2011 passed in C.C.No.532 of 2004 on the file of the Judicial Magistrate Court No.VI, Coimbatore, confirmed by the judgment and order dated 26.06.2012 passed in C.A.No.162 of 2011 on the file of the III Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.M.R.Thangavel

For Respondent : Mr.Saitanya Kesan
for Mrs.C.Usha

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 06.07.2011 passed in C.C.No.532 of 2004 on the file of the Judicial Magistrate Court No.VI, Coimbatore, confirmed by the judgment and order dated 26.06.2012

passed in C.A.No.162 of 2011 on the file of the III Additional District and Sessions Court, Coimbatore.

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 from December 2001 to September 2003, the accused had borrowed a sum of Rs.4,00,000/- and in discharge of the said debt, the accused gave a cheque dated 28.10.2003 bearing No.202613 (Ex-P1), which, when presented by the complainant, returned with the endorsement "Funds Insufficient" vide bank memo dated 29.10.2003 (Ex-P2). Hence, the complainant issued a statutory demand notice dated 05.11.2003 (Ex-P3), which was received by the accused, as could be seen from the postal acknowledgement card (Ex-P4). The accused issued a reply notice dated 19.11.2003 (Ex-P6) repudiating the debt.

3.1 Therefore, the complainant initiated a prosecution in C.C.No.532 of 2004 before the Judicial Magistrate No.VI, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

3.2 Before the trial Court, the complainant examined himself as PW1 and marked six exhibits.

3.3 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 and one Rajendran as DW2 and marked the passbook of the complainant (PW1) as Ex-D1.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.07.2011 in C.C.No.532 of 2004, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

3.5 The appeal in C.A.No.162 of 2011, which was filed by the accused was dismissed by the III Additional District and Sessions Court, Coimbatore, on 26.06.2012.

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

4. Heard Mr.M.R.Thangavel, learned counsel for the accused (DW1) and Mr.Saitanya Kesan, learned counsel representing Mrs.C.Usha, learned counsel on record for the complainant (PW1).

5. This Court is conscious of the fact that, while exercising the power under Section 397 r/w 401 Cr.P.C., evidence cannot be re-appreciated like a second appellate Court. However, if it is seen that there has been gross misappreciation of the evidence on record, this Court is not completely denuded of the power to re-appreciate the evidence in view of Section 401 (1) Cr.P.C.

6. The complainant (PW1), in his evidence, has spoken to about the debt, issuance of the impugned cheque (Ex-P1) for a sum of Rs.4,00,000/-, its dishonour, issuance of the statutory demand notice (Ex-P3), receipt of the reply notice (Ex-P6) and filing of the complaint.

7. Now, it has to be seen whether the accused has rebutted the presumption under Section 139 of the NI Act. The reply notice dated 19.11.2003 (Ex-P6) that was sent by the accused (DW1) requires discussion.

8. The reply notice (Ex-P6) has been sent to three persons viz., Ponnusamy, Palanisamy and Ramamoorthy (complainant herein). In the reply notice (Ex-P6), the accused (DW1) has stated that he has borrowed a sum of Rs.50,000/- from Ponnusamy in June 2002 for his business purposes and Ponnusamy demanded 5% interest per month; at the time of obtaining the loan, Ponnusamy demanded two blank, but, signed cheque leaves, one from him (accused) and the other from his mother, Savithri; the loan of Rs.50,000/- that was taken from Ponnusamy was paid back with interest in installments and the last of such payment was made on 14.08.2003; thereafter, when the accused requested Ponnusamy to return the two cheques, he dragged his feet on flimsy excuses; however, he (Ponnusamy) handed over his mother Savithri's cheque to his (Ponnusamy's) father-in-law Palanisamy and the other cheque to his (Ponnusamy's) co-brother, Ramamoorthy (complainant herein); both of them viz., Palanisamy and Ramamoorthy, have filled in the cheques for a sum of Rs.4,00,000/- each, presented them independently and after they were dishonoured, sent statutory demand notice to Savithri and the accused herein and filed two prosecutions viz., one by Palanisamy against Savithri and the other by Ramamoorthy (complainant herein) against Saravanan (accused herein). This, in short, is the defence of the accused.

9. In the cross-examination, Ramamoorthy (complainant/PW1) admitted that Palanisamy is his father-in-law and Ponnusamy is his co-brother. However, he (PW1) denied the suggestion that the impugned cheque was given for the loan taken by the accused (DW1) from Ponnusamy.

10. In the cross-examination, the accused (DW1) stated that his mother was prosecuted by Palanisamy under Section 138 of the NI Act and both prosecutions were engineered by Ponnusamy.

11. Mr.M.R.Thangavelu, learned counsel for the accused (DW1) submitted that Savithri, mother of the accused (DW1), was acquitted by the same Court in C.C.No.524 of 2004 that was filed by Palanisamy.

12. The records show that the complaint in C.C.No.524 of 2004 filed by Palanisamy against Savithri and the complaint in the present case viz., C.C.No.532 of 2004 contain identical averments. In both cases it is averred that, a loan of Rs.4,00,000/- was given between 2001 and 2003. In both cases, the loan amount is Rs.4,00,000/- and the period is also same. In the cross-examination of the complainant (PW1), he has stated that he does not remember the dates, on which, the loan was given from 2001 to 2003 to the accused (DW1).

13. Concededly, Palanisamy is the father-in-law of Ramamurthy and they are not strangers. Saravanan (accused herein) and Savithri are son and mother. One wonders if it was a cosmic coincidence that the mother and son borrowed Rs.4,00,000/- each, during the same period, from the father-in-law and son-in-law duo or the prosecutions were contrived at the behest of Ponnusamy, as consistently contended by the accused (DW1) beginning from the reply (Ex-P6) to his evidence in the Court as DW1. It does not require Solomon's wisdom to come to the right inference. The accused has indubitably probabalized her defence alluded to above.

14. 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 Mohan¹.

15. Both the Courts below have failed to see these aspects while convicting the accused (DW1).

In the result, this criminal revision is allowed by setting aside the judgment and order dated 06.07.2011 passed in C.C.No.532 of 2004 on the file of the Judicial Magistrate Court No.VI, Coimbatore, confirmed by the judgment and order dated 26.06.2012 passed in C.A.No.162 of 2011 on the file of the III

Additional District and Sessions Court, Coimbatore. As a sequel, Saravanan (accused herein) is acquitted of the charge under Section 138 of the NI Act. Bail bond, if any, executed by the accused (DW1) shall stand cancelled. Fine amount, if any, paid by the accused (DW1) shall be refunded. Any amount, deposited by the accused (DW1) shall be refunded to him.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.VI,
Coimbatore.
2. The III Additional District and Sessions Judge,
Coimbatore.
3. The Deputy Registrar,
(Crl.Section)
Madras High Court, Chennai - 104.

+1cc to Mr.M.R.Thangavel, Advocate, SR.No.94978.
+1cc to Mr.A.E.Ravichandran, Advocate, SR.No.94792.

Order in
Crl.R.C.No.1253 of 2012

NMI (CO)
CSR(18/12/2019)

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