BAIL SLIP

The Appellant/Accused was directed to be released on bail as per order of this court dated 15.10.2012 made in Crl.MP.No.1/2012 in Crl.R.C.No.1297 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2019

PRONOUNCED ON : 19.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1297 of 2012

Rajaram .. Petitioner/Accused

Vs.

Manikchand .. Respondent/Complainant

Criminal Revision preferred under Sections 397 read with 401 Cr.P.C. to set aside the judgment and order dated 29.03.2012 passed by the Additional District and Sessions Judge (Fast Track Court No.II), Tindivanam in C.A.No.36 of 2011 confirming the conviction and modifying the sentence imposed by the Additional District Munsif, Tindivanam in C.C.No.30 of 2011 vide judgment and order dated 05.07.2011.

For Petitioner : Mr.A.Palaninathan
for M/s.A.Amarnath

For Respondent : Mr.R.C.Manoharan

O R D E R

For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant respectively.

2.It is the case of the complainant that, he is the proprietor of Ugam Finance and he is into the business of giving vehicle loans under hire purchase agreement; Anusuya, wife of the accused obtained two vehicle loans for purchasing two lorries viz. TN21-X 3799 and TN21-X 9096; she was not regular in paying monthly instalments and therefore, he started pressurizing her for payment; under such circumstances, she came with her husband for talks and her husband gave two cheques (Ex.P1 series), both dated 10.01.2003 for Rs.1,12,900/- and Rs.1,08,000/- drawn on Indian Bank, Kiliyanur branch; the complainant presented the cheques in his account with the Karur Vysya Bank, Tindivanam and both cheques were returned with the endorsement "funds insufficient", which was intimated to the complainant on 13.02.2003 by his bank; the complainant issued a statutory demand notice (Ex.P3) dated 23.02.2003, which was received by the accused on 25.02.2003 vide acknowledgment card (Ex.P4), for which, the accused sent a reply notice dated 03.03.2003 (Ex.P5) repudiating the debt. Therefore, the complainant initiated a prosecution in C.C.No.30 of 2006 before the Additional District Munsif, Tindivanam under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

3.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

4.The complainant examined himself as P.W.1 and one Ramasamy, Branch Manager, Karur Vysya Bank as P.W.2 and marked Exs.P1 to P6. In the cross-examination of the complainant, the defence marked Exs.D1 to D3.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 05.07.2011 in C.C.No.30 of 2006, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay fine of Rs.5,000/- in default, to undergo three months simple imprisonment. The Additional District and Sessions Court (Fast Track Court No.II), Tindivanam vide judgment and order dated 29.03.2012 in C.A.No.36 of 2011 that was filed by the accused, while confirming the conviction, set aside the substantive sentence of imprisonment and also the fine element and directed the accused to pay the cheque amounts viz. Rs.1,12,900/- and Rs.1,08,000/- within a period of one month, in default to undergo simple imprisonment for a period of one month. Challenging the concurrent findings of fact of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

7.Heard the learned counsel for the accused and complainant.

8.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. .... "
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> (emphasis supplied)

9.Learned counsel for the accused submitted that the cheques were dishonoured on 22.01.2003 and the statutory demand notice was issued only on 23.02.2003 beyond the period of limitation and therefore, the prosecution stood vitiated. On perusal of the trial Court records, it is seen that the complainant has presented the cheques on 22.01.2003 in Karur Vysya Bank, Tindivanam, from where, the cheques went to the Indian Bank, Kilianur and the return memo of Indian Bank bears the date 24.01.2003. Thereafter, the cheques were sent back to the Karur Vysya Bank, which intimated the complainant on 13.02.2003. Therefore, the issuance of the statutory demand notice on 23.02.2003 was within the prescribed time.

10.The complainant, who examined himself as P.W.1, has spoken about the finance given by him to Anusuya, wife of the accused for purchasing two lorries viz. TN21-X 3799 and TN21-X 9096, the issuance of two cheques by the accused for discharging the said loan, the presentation of the two cheques, their dishonour, issuance of statutory notice, receipt of reply notice and the failure of the accused to comply with the demand.

11.The defence of the accused was that, his wife has discharged the vehicle loans and the complainant had misused the cheques that were given as security. Except marking the reply notice and suggesting the defence case, the accused has not produced any material to probablise the said defence. Even in his 313 Cr.P.C. statement, he has merely denied the allegations and nothing beyond that. 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

Mohan [2010 (4) CTC 118], he had failed to do the same. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference, especially in the light of the recent judgment of the Supreme Court in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019).

In the result, this Criminal Revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to 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. It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offences, even after he is taken into custody. Registry is directed to transmit the original records, if any to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Court,
(Fast Track Court No.II), Tindivanam.

2. The Additional District Munsif,
Tindivanam. Tindivanam.

3. The Chief Judicial Magistrate, Villupuram.

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

+1cc to M/s.A.Amarnath, Advocate, S.R.No.97019
+1cc to Mr.R.C.Manoharan, Advocate, S.R.No.95845

CRL.R.C.No.1297 of 2012

EV(CO)
CS/30/12/2019