Bail Slip

The petitioner/Accused Viz., M.S.Farook, was directed to be release on bail as per order of this court dated.17/10/2012 in MP.1/2012 in Crl.RC.No.1308/2012, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1308 of 2012

M.S.Farook .. Petitioner/Appellant Accused

Vs.

Fasil Ahammed .. Respondent/Respondent Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment dated 19-07-12 passed in CA 4/2008 on the file of the District & Sessions Court, Tiruvarur, confirming by the judgment dated 05-09-2008 passed in C.A.No.172 of 2006 on the file of the Judicial Magistrate Court, Tiruvarur.

For Petitioner : Ms.E.Yuvarani for Ms.R.Poornima

For Respondent : No appearance

O R D E R

This criminal revision has been filed seeking to set aside the judgment 19.07.2012 passed in C.A.No.4 of 2008 on the file of the District and Sessions Court, Tiruvarur, confirming the Judgment dt.5-9-08 passed in CC.No.172/2006 on the file of the Judicial Magistrate Court, Tiruvarur.

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

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3. It is the case of the complainant that the accused is a cable TV operator and is well known to him; on 15.02.2006, the accused borrowed a sum of Rs.2,00,000/- from him and executed a promissory note in favour of the complainant; however, the accused took back the promissory note on 15.05.2006 and gave a cheque (Ex-P1) dated 15.05.2006 for a sum of Rs.2,00,000/-, drawn on Primary Agricultural Cooperative Bank, Koothur; the complainant presented the said cheque in City Union Bank on 20.05.2006; but, it was returned unpaid with the endorsement "Insufficient Funds" on 01.06.2006 vide bank's return memo (Ex-P2); therefore, the complainant issued a statutory demand notice dated 13.06.2006 (Ex-P3), which was received by the accused on 21.06.2006 vide postal acknowledgement card (Ex-P4); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.172 of 2006 before the Judicial Magistrate, Tiruvarur, 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, Rajagopal, Branch Manager of City Union Bank as PW2 and Pakirisamy, Branch Manager of Primary Agricultural Cooperative Bank as PW3 and marked four exhibits.

5. 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 give any explanation as to how the cheque executed by him came into the hands of the complainant. On behalf of the accused, no witness was examined, however, three exhibits were marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 05.09.2008, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo two months simple imprisonment.

7. The appeal in C.A.No.4 of 2008 filed by the accused was dismissed by the District and Sessions Court, Tiruvarur, on 19.07.2012.

8. Aggrieved by 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 Ms.E.Yuvarani, learned counsel representing Ms.R.Poornima, learned counsel on record for the accused. Notice

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has not been served on the complainant.

10. Before adverting to the submissions made by the learned counsel for the accused, 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 Kumar[2], 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. The learned counsel for the accused submitted that the accused had borrowed money from one Abirami Chettiyar and not from the complainant; the impugned cheque (Ex-P1) given to Abirami Chettiyar, has been given to the complainant for initiating the present prosecution; hence, the conviction of the accused is illegal.

12. The complainant, in his evidence, has spoken to about the loan of Rs.2,00,000/- that was taken by the accused on 15.02.2006, the issuance of the impugned cheque (Ex-P1), its presentation and dishonour, the issuance of the statutory demand notice (Ex-P3), its receipt by the accused vide postal acknowledgement card (Ex-P4) and the failure of the accused to comply with the demand.

13. In the cross-examination of the complainant, it was suggested to him that the accused had taken the loan from Abirami Chettiyar and had given the impugned cheque (Ex-P1) to him (Abirami Chettiyar); the said cheque (Ex-P1) has been misused even after the accused had paid the amount borrowed from Abirami Chettiyar, which suggestion, the complainant denied.

1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

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14. Apart from suggesting to the complainant, the defence case, the accused has not placed any credible material to probabilize his defence.

15. 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[3], even that has not been done in this case.

16. With regard to the submission of the learned counsel for the accused that the complainant has five different names and therefore, the entire prosecution case deserves to be rejected, it is seen that the name Fasil Ahammed has been given different spellings and that, by itself, will not lead to the inference that the complainant is an imposter. In fact, the complainant examined Rajagopal (PW2), Branch Manager, City Union Bank, where, he was having his account.

17. In such perspective of the matter, this Court does not find any infirmity or perversity in the judgments and orders passed by the Courts below, warranting interference.

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 serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, ibid., even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid., the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1308 of 2012. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
   Tiruvarur.

3 (2010) 11 SCC 441

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2. The District and Sessions Judge,
Tiruvarur.

3.The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return the original records to the Courts below concerned

+1cc to M/s.R.Poornima, Advocate SR.102304

Crl.R.C.No.1308 of 2012

RR(CO)
CB(10/02/2020)

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