Bail Slip

The Appellant/Accused,namely C.K.S.Soundarrajan S/o. Shanmugam was directed to be released on bail as per order of this Court dated 29.10.2012 in MP.NO.1&2/12 IN Crl.R.C.No.1335 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1335 of 2012

C.K.S.Soundarrajan .. Petitioner/Appellant Accused

Vs.

S.Kalaikumar .. Respondent/Respondent Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 28.02.2012 passed in C.C.No.551 of 2010 on the file of the Judicial Magistrate Court No.I, Coimbatore, confirmed by the judgment and order dated 05.09.2012 passed in C.A.No.104 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.S.Suresh
Amicus curiae

For Respondent : Mr.A.Thiyagarajan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 28.02.2012 passed in C.C.No.551 of 2010 on the file of the Judicial Magistrate Court No.I, Coimbatore, confirmed by the judgment and order dated 05.09.2012 passed in C.A.No.104 of 2012 on the file of the IV 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 the accused borrowed monies from him, as per details below:

| Date on which the accused borrowed money | Amount (Rs.) |
|---|---|
| 16.09.2009 | 50,000/- |
| 28.10.2009 | 3,00,000/- |
| 18.11.2009 | 3,00,000/- |
| 01.12.2009 | 3,50,000/- |
| Total | 10,00,000/- |

In discharge of the aforesaid liabilities, the accused issued three cheques, the details of which are as follows:

| Sl.No. | Cheque bearing No. | Cheque amount | Cheque dated | Drawn on |
|---|---|---|---|---|
| 1 | 021218 | Rs.3,00,000/- | 25.01.2010 | ICICI Bank, R.S.Puram Branch, Coimbatore. |
| 2 | 021700 | Rs.2,00,000/- | 25.01.2010 | ICICI Bank, R.S.Puram Branch, Coimbatore. |
| 3 | 021717 | Rs.5,00,000/- | 25.01.2010 | ICICI Bank, R.S.Puram Branch, Coimbatore. |

The complainant presented all the three cheques, but, they were dishonoured; the complainant informed this to the accused, pursuant to which, the accused gave a sum of Rs.2,00,000/- on 27.01.2010, Rs.2,00,000/- on 31.01.2010 and Rs.1,00,000/- on 08.02.2010, totally Rs.5,00,000/- and got back the two cheques viz., the cheque dated 25.01.2010 bearing No.021218 for the sum of Rs.3,00,000/- and the cheque dated 25.01.2010 bearing No.021700 for the sum of Rs.2,00,000/- that were given by him earlier; the accused requested the complainant to re-present the cheque (Ex-P1)dated 25.01.2010 bearing No.021717 for the sum of Rs.5,00,000/- in the third week of March; accordingly, the complainant presented the said cheque on 20.03.2010 in Bank of India, Saibaba Colony Branch, but it was dishonoured and returned unpaid with the endorsement “Funds Insufficient” vide bank's return memo (Ex-P2) dated 22.03.2010; therefore, the complainant issued a statutory demand notice (Ex-P4) dated

24.03.2010, which was received by the accused on 26.03.2010 vide postal acknowledgement card (Ex-P5); the accused issued a reply notice (Ex-P6) dated 01.04.2010, repudiating the debt; since the complainant did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.551 of 2010 before the Judicial Magistrate No.I, Coimbatore, 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 ten 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, two witnesses were examined viz., Singari, Branch Manager, Bank of India, Saibaba Colony Branch, Coimbatore, where the complainant was having his bank account, as DW1 and Athipathi, Assistant Branch Manager, ICICI Bank, Coimbatore, as DW2 and one exhibit was marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.02.2012 in S.T.C.No.557 of 2012, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.104 of 2012 filed by the accused was dismissed by the IV Additional District and Sessions Court (Fast Track Court No.II), Coimbatore, on 05.09.2012.

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. At the time of admission, this Court, by judgment and order dated 29.10.2012 in M.P.Nos.1 & 2 of 2012 in Crl.R.C.No.1335 of 2012, suspended the sentence and directed release of the accused on bail, pending disposal of the revision petition without he surrendering.

10. On 02.12.2019, this Court passed the following order:

> "Today, when the matter was taken up for hearing, learned counsel appearing for the revision petitioner submitted that he has no instructions and that he has also withdrawn the vakalat.

Therefore, Registry is directed to print the name of the revision petitioner in the cause list and post the matter on 03.12.2019."

11. On 03.12.2019, this Court passed the following order:

"When the matter was taken up for hearing on 02.12.2019, counsel for the revision petitioner submitted that he has no instructions and that he has also withdrawn the vakalat. Therefore, this Court directed the Registry to print the name of the revision petitioner in the cause list on 03.12.2019.

2. Accordingly, the name of the revision petitioner is printed in the cause list today. His name was called thrice by the Office Assistant of this Court. The petitioner has not made any arrangement to enter appearance.

3. This Court can cancel the suspension of sentence and bail that has been granted to the revision petitioner, which extreme step, this Court does not want to take. Hence, this Court appoints Mr.S.Suresh (Enrollment No.1372/2004), Advocate of more than 10 years standing, to appear for the revision petitioner. Copy of Typed Set of Papers is furnished to Mr.S.Suresh.

4. Post the matter on 06.12.2019 for final hearing."

12. Heard Mr.S.Suresh, learned counsel for the accused and Mr.A.Thiyagarajan, learned counsel for the complainant.

13. Before adverting 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 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

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a court having jurisdiction, in the absence of a jurisdictional error. .... ” (emphasis supplied)



14. The learned counsel for the accused submitted that the accused had discharged the burden under Section 139 of the NI Act and has established that the impugned cheque was not issued towards any “legally enforceable debt”. He also submitted that both the Courts below have failed to appreciate the evidence of Singari (DW1) and Athipathi (DW2), in the proper perspective.

15. Per contra, the learned counsel for the complainant refuted the submissions made by the learned counsel for the accused.

16. The complainant, who, examined himself as PW1, has spoken to about the loan of Rs.10,00,000/- that was taken by the accused, the issuance of the three cheques, their initial dishonour, the payment of Rs.5,00,000/- by the accused, the return of the two cheques to the accused on such payment, re-presentation of the cheque (Ex-P1) for a sum of Rs.5,00,000/- on 20.03.2010, its dishonour on 22.03.2010, the issuance of the statutory demand notice (Ex-P4) dated 24.03.2010, the receipt of the same by the accused on 26.03.2010 vide postal acknowledgment card (Ex-P5), the reply notice (Ex-P6) dated 26.03.2010 sent by the accused and the failure of the accused to comply with the demand.

17. The contention of the accused is that he had taken only Rs.5,00,000/- as loan, which he had discharged and the impugned cheque (Ex-P1) for Rs.5,00,000/- was misused by the complainant.

18. The complainant has established that the impugned cheque (Ex-P1) for the sum of Rs.5,00,000/- was presented once on 27.01.2010 along with the other two cheques for Rs.2,00,000/- and Rs.3,00,000/-. All the three cheques were dishonoured, after which, the accused paid Rs.5,00,000/- and took back the two cheques for Rs.2,00,000/- and Rs.3,00,000/-. The complainant re-presented the third cheque only on 22.03.2010.

19. Moreover, the accused has not denied his signature in the impugned cheque (Ex-P1). Had the accused taken only Rs.5,00,000/- as loan and discharged it, he would have taken steps to get back the impugned cheque (Ex-P1) or would have given “Stop Payment” instruction, but, he did neither.

20. In fact, in the cross-examination of Singari (DW1), the complainant has marked Exs-P8, P9 and P10, to show the transactions he has had with the accused. Thus, the accused himself has bolstered the case of the complainant by examining

the Branch Manager of Bank of India, Saibaba Colony Branch, Coimbatore, where the complainant was having his bank account, as DW1.

21. 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.

22. 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.1335 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(CS VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.I,Coimbatore.
2. The IV Additional District and Sessions Judge,Coimbatore.
3. The Deputy Registrar, (Crl.Side) Madras High Court, Chennai - 104.
4. The Section Officer, Criminal Section, High Court,Madras

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

+1cc to Mr.A.Thiyagarajan , Advocate SR.No. 101959

Crl.R.C.No.1335 of 2012

A.SK(22/01/2020)

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