BAIL SLIP

The Petitioner/Accused viz.S.Lakshmanan, S/o.Seetharaman, was directed to be released on bail as per order of this Court dated 30/11/2012 in Crl.M.P.No. 1/2012 in Crl.Rc.No. 1432/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1432 of 2012

S.Lakshmanan .. Petitioner/Appellant Accused

Vs.

M/s.Arjun Amaravathi Chits (P) Ltd.,
Represented by D.Chandramohan,
502, Hundred Feet Road,
Gandhipuram,
Coimbatore - 12. .. Respondent/ Respondent/ Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 09.04.2012 passed in C.C.No.337 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 04.09.2012 passed in C.A.No.142 of 2012 on the file of the V Additional District and Sessions Court (Fast Track Court No.III), Coimbatore.

For Petitioner : Mr.Ayyappan
for Mr.M.Guruprasad

For Respondent : Mr.P.M.Duraiswamy

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 09.04.2012 passed in C.C.No.337 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 04.09.2012 passed in C.A.No.142 of 2012 on the file of the V Additional District and Sessions Court (Fast Track Court No.III), Coimbatore.

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

3. The complainant is Arjun Amaravathi Chits Private Limited , a non-banking financial institution, which runs chit transactions under the Chit Funds Act, 1982. Senthilkumar joined as a subscriber in a chit for a value of Rs.1,00,000/- spread over twenty months in two tickets. Senthilkumar participated in the bid and received a sum of Rs.1,50,000/- as loan. The accused stood guarantee for the loan and executed the necessary documents. Senthilkumar defaulted in repayment and the due amount was Rs.90,800/- as on 23.05.2007. Towards the debt, the accused gave a cheque (Ex-P2) dated 12.06.2008 for a sum of Rs.90,800/-, drawn on Karur Vysya Bank. When the complainant presented the said cheque (Ex-P2), it was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P3) dated 13.06.2008. Therefore, the complainant issued a statutory demand notice (Ex-P4) dated 04.07.2008, which was received by the accused on 08.07.2008 vide postal acknowledgement card (Ex-P6).

4. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.318 of 2009 before the Judicial Magistrate No.V, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused. On the constitution of the Fast Track Courts, the case was transferred to the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore and re-numbered as C.C.No.337 of 2011.

5. Before the trial Court, the complainant examined himself as PW1 and marked nine exhibits.

6. 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 nor any document marked.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 09.04.2012 in C.C.No.337 of 2011, 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 fine of Rs.3,000/-, in default to undergo two months simple imprisonment.

8. The appeal in C.A.No.142 of 2012 filed by the accused was dismissed by the V Additional District and Sessions Court (Fast Track Court No.III), Coimbatore, on 04.09.2012.

9. 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.

10. Heard Mr.Ayyappan, learned counsel for the accused. Though notice was served on the complainant, none had entered appearance. Hence, this Court appointed Mr.P.M.Duraisamy (Enrollment No.225 of 1993) to argue on behalf of the complainant.

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

12. Chandramohan (PW1), in his evidence, has stated that he is working as Manager in Arjun Amaravathi Private Limited and a copy of the resolution of the board, authorising him (PW1) to depose, was marked as Ex-P1. He has further stated that Senthilkumar subscribed a chit value of Rs.1,00,000/-, participated in the bid, took a loan of Rs.1,50,000/-, for which, the accused stood as guarantor; the amount that was due from Senthilkumar was Rs.90,800/- as on 23.05.2007; towards the loan, the accused executed a confirmation of balance note dated 12.06.2008 (Ex-P7), along with which, he gave the impugned cheque (Ex-P2) for Rs.90,800/-. Chandramohan (PW1) has further stated about the presentation of the cheque (Ex-P2), its dishonour, the issuance of the statutory demand notice (Ex-P4) and the failure of the accused to comply with the demand.

1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

13. The learned counsel for the accused submitted that Chandramohan (PW1) was not properly authorized by the Chit Company in the resolution (Ex-P1); his name has been given as "Chandramohan Lal", whereas, in the complaint, his name has been given as "Chandramohan". In the opinion of this Court, this is too trivial a ground to eschew the evidence of Chandramohan (PW1).

14. Chandramohan (PW1), in his evidence, has stated that he is working as Manager in Arjun Amaravathi Private Limited and the same has not been denied by the accused. Even in the absence of any authorisation, Chandramohan (PW1) can give evidence as the Manager of the Chit Company.

15. The learned counsel for the accused submitted that Chandramohan (PW1) has not stated that he personally knew about the chit transactions of Senthilkumar and therefore, his evidence cannot be relied upon.

16. In a case of this nature, where, evidence is borne out by records, any officer of the company can speak about the transaction from the records maintained by the company in the usual course of the business.

17. Be that as it may, the accused has signed in the confirmation note (Ex-P7). Even in the confirmation note (Ex-P7), the details of the impugned cheque (Ex-P2) find place.

18. This Court carefully read the cross-examination of Chandramohan (PW1). Except suggesting to him (PW1) that he is not competent to give evidence, which suggestion, Chandramohan (PW1) has denied, the defence had not made any dent in his testimony. Moreover, the accused has not denied the issuance of the impugned cheque (Ex-P2).

19. With regard to the submission of the learned counsel for the accused that the statutory demand notice (Ex-P4) was not received by the accused, but, by one Sunitha, as could be seen from the postal acknowledgement card (Ex-P6), the fact remains that the statutory demand notice (Ex-P4) has been sent to the address given by the accused in the confirmation note (Ex-P7) and the same has not been denied by the accused. Therefore, the burden is on the accused to prove that Sunitha was a stranger and did not belong to his household.

20. As regards the contention of the learned counsel for the accused that the impugned cheque was not issued for any loan that was taken by the accused, but was only given as security for the loan taken by Senthilkumar and hence, the same will not attract Section 138 of the NI Act, this issue is no longer res

integra, in the light of the judgment of the Supreme Court in I.C.D.S. Limited Vs. Beena Shabeer & Another[3].

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

22. In view of the foregoing discussion, 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.1432 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. This Court places on record its appreciation to Mr.P.M.Duraisamy for taking up the case of the complainant as pro bono.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.

2. The V Additional District
and Sessions Judge,
(Fast Track Court No.III),
Coimbatore.

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3 (2002) 6 SCC 426

4 (2010) 11 SCC 441

3. The Deputy Registrar, Madras High Court, Chennai - 600 104.

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

4.The Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.Guruprasad, Advocate, S.R.No. 104145

NRL(CO)
GN(28/02/2020)