Bail Slip

The Appellant/Accused,namely P.Samuel aged 57 Years S/o.Ponnaian Nadar,was directed to be released on bail as per order dated 30.11.2012 in CRL MP.NO.1&2/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.R.C.Nos.1444 and 1445 of 2012

P.Samuel ... Revision Petitioner in both revision cases/ Accused

Vs.

S.Bashu ... Respondent in both revision cases/Complainant

Criminal Revision Cases in Crl.R.C.Nos.1444 and 1445 of 2012 filed under Section 397 and 401 Cr.P.C., to set aside the judgments dated 03.09.2012 in C.A.Nos.210 and 209 of 2011, respectively, on the file of the IV Additional District and Sessions Court (formerly Fast Track Court No.II), Coimbatore, confirming the conviction in C.C.Nos.33 and 32 of 2009, respectively, on the file of the Judicial Magistrate's Court No.II, Coimbatore.

For Petitioner : Mr.J.Prakasam in both revision cases

For Respondent : Mr.W.Camyles Gandhi in both revision cases

C O M M O N O R D E R

These Criminal Revision Cases are filed to set aside the judgments dated 03.09.2012, in C.A.Nos.210 and 209 of 2011, respectively, on the file of the IV Additional District and Sessions Court (formerly Fast Track Court No.II), Coimbatore, confirming the conviction and modifying the sentence imposed in C.C.Nos.33 and 32 of 2009, respectively, on the file of the Judicial Magistrate's Court No.II, 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 he has a footwear shop in Nehru Street, Rathinapuri, Coimbatore, near to which, is Balamani Food Products, the shop of the accused; in July, 2007, the accused borrowed Rs.3,00,000/- as hand loan from the complainant promising to return the amount within three months; since the complainant and the accused were friends for a long time, the complainant obliged the accused; when the complainant started demanding return of the amount, the accused issued two cheques, one dated 25.08.2008 bearing No.015791 (Ex.P1 in C.C.No.32 of 2009) for Rs.1,50,000/- and the other dated 04.08.2008 bearing No.015792 (Ex.P1 in C.C.No.33 of 2009) for Rs.1,50,000/-, both drawn on Tamil Nadu Industrial Cooperative Bank Limited, Gandhipuram, Coimbatore; the complainant presented both the cheques for clearance on the same day and both of them were returned unpaid with endorsement 'funds insufficient' on 28.08.2008, vide Return Memo (Ex.P2 in both cases); the complainant issued two statutory demand notices, both dated 17.09.2008, to the accused, which were received by the accused; since the accused did not comply with the demand, the complainant initiated two prosecutions, viz., C.C.No.32 of 2009 for the cheque dated 25.08.2008 and C.C.No.33 of 2009 for the cheque dated 04.08.2008, before the Judicial Magistrate No.II, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act ('NI Act' for brevity), against the accused.

4.In each case, the complainant examined himself as P.W.1 and marked Exs.P1 to P9. He also examined one Balaji (P.W.2), Branch Manager of City Union Bank, Coimbatore, where he was having his account, to show that he had the means to give the loan. Apart from that, he examined one Ananthakrishnan as P.W.3, who has stated that he (P.W.3) is the Manager of Kannan Department Stores and the complainant would supply footwear to his (P.W.3's) Stores and that the annual transaction between them was to a tune of Rs.10,25,995/- vide Ex.P7.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the allegations, but did not come forward to explain the circumstances under which the two cheques came into the custody of the complainant.

6.The accused examined one Srikanth (D.W.1), Branch Manager of South Indian Bank, Coimbatore, where the complainant was having an account and marked the statement of accounts (Ex.D1) to show that there were no huge transactions in that account.

7.After considering the evidence on record and hearing either side, the trial Court, by two separate judgments in

C.C.No.32 of 2009 and C.C.No.33 of 2009, both dated 08.09.2011, convicted the accused and sentenced him to undergo simple imprisonment for one year and pay fine of Rs.5,000/- in default to undergo simple imprisonment for three months in each case.

8.The two appeals in C.A.Nos.209 and 210 of 2011 that were filed by the accused were heard by the IV Additional District and Sessions Court (Fast Track Court No.II), Coimbatore. The appellate Court, by two separate judgments, both dated 03.09.2012, confirmed the conviction in both the cases, but, reduced the substantive sentence of imprisonment imposed on the accused from one year simple imprisonment to six months simple imprisonment in both the cases.

9.Challenging the concurrent findings of the two Courts below, the accused has filed the present Criminal Revision Cases, before this Court, under Section 397 r/w. 401 Cr.P.C.

10.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)

11.Learned counsel for the accused submitted that there was no legally enforceable debt, inasmuch as the complainant has not stated the exact date on which the loan of Rs.3,00,000/- was taken by the accused. He further contended that the complainant, in the cross-examination, has stated that he had withdrawn a part of the amount from his Bank and the rest of the amount, he had with him in cash, which he had given as hand loan to the accused, whereas, the evidence of Srikanth (D.W.1) shows that the complainant did not have any huge transaction in South Indian Bank. He also contended that there is no material to show that the complainant had withdrawn the money and given to the accused. In support of his contentions, the learned counsel placed strong reliance on the following judgments :

(i)Basalingappa v. Mudibasappa [2019 (5) SCC 418]

(ii)Muthukumaran v. Periyasamy [(2012) SCC Online Mad 1283]

(iii)Order of District Court, Delhi, in Rakesh Manocha

v. Rajinder Kumar [C.C.No.1828 of 2016 decided on 28.08.2018]

12.Per contra, learned counsel for the complainant refuted the contentions.

13.This Court gave its anxious consideration to the rival submissions.

14.The complainant, in his evidence, has stated about his friendship with the accused. The complainant has stated that the accused represented to him that he (accused) needs Rs.3,00,000/- for buying a house and that he (accused) will return the amount within three months and hence, he gave the accused, Rs.3,00,000/-; even after three months, when the accused did not return the amount, he started pestering him; the accused gave two cheques of Rs.1,50,000/- each; when presented, both the cheques were return unpaid on the ground 'funds insufficient'; he issued two statutory demand notices to the accused, which were received by the accused, but no payment was made by the accused. In the cross-examination of the complainant, he has stated that, from his business, he would get around Rs.30,000/- per month; even on earlier occasions, he had given loans to the accused, which, the accused had returned. The complainant admitted that the accused was arrested by the Civil Supplies CID Police for stocking PDS rice in his shop and that he helped the accused in coming out on bail. It was suggested to the complainant that, when the accused was in jail, the complainant went to the accused's house, played deceit on his (accused's) wife and took away the two cheques, which suggestion, the complainant denied.

15.The learned counsel for the accused submitted that the cheque, bearing number 015791, is dated 25.08.2008, whereas, the cheque, bearing number 015792, is dated 04.08.2008, which shows that the cheques were not serially issued.

16.This Court perused the original cheques (Ex.P1 in both cases) and found that they bear the rubber stamp of Balamani Food Products and the accused has signed in his capacity as Proprietor, in them. This Court does not find any incongruity in the impugned cheques to raise suspicion. From the answer given by the complainant in the cross-examination that he had helped the accused, when the accused was arrested by the police, only shows their proximity. Had the complainant taken away the impugned cheques from the house of the accused, the accused would have issued directions to his Bank to stop payment, which, he had not done. In fact, the cheques were not even presented on the date mentioned thereon, but only on 27.08.2008.

17.Coming to the judgments relied upon by the learned counsel for the accused, each turns out on the facts obtaining therein. For example, in Basalingappa (supra), the trial Court acquitted the accused, but, the Karnataka High Court reversed the acquittal. In that case, the accused had adduced evidence to show that the complainant therein had given away his terminal benefits to various persons and that he (complainant therein) did not have the means to give a huge loan of Rs.6,00,000/-, whereas, in this case, the complainant owns a footwear shop. The complainant has examined Ananthakrishnan (P.W.3) to speak about the volume of business transactions between them. He has also examined Balaji (P.W.2), Branch Manager of City Union Bank and has marked his statements of accounts to show the volume of transactions in his account. The complainant also has an account in South Indian Bank and the accused has examined Mr.Srikanth, Branch Manager of South Indian Bank as D.W.1. The statement of account in South Indian Bank (Ex.D1) does not reflect any huge transaction. But, that by itself cannot lead to the inference that the complainant had not given the hand loan in July 2007 to the accused. Just because the complainant had not stated the correct date on which the loan was taken by the accused and had instead stated that the loan was given in July 2007, his case cannot be completely disbelieved, especially when both Courts below have appreciated the evidence on record in the proper perspective.

18.In Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019), the Supreme Court has held as follows :

> "20.The Trial Court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.
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> 21.There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act ... ... "

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], the same has not been done in this case.

19.In fine, this Court does not find any infirmity in the judgments of the Courts below. In the result, these Criminal Revision Cases are dismissed and the judgments of the two Courts below are confirmed.

If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with these cases, 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 offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid. before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in Crl.R.C.Nos.1444 and 1445 of 2012.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.II,
Coimbatore.

3.The Deputy Registrar |
(Criminal Section), with a direction to send back the original
High Court, Madras.|records to the respective Courts below

+1cc to Mr.W.Camyles Gandhi , Advocate SR.No. 103619
+2ccs to Mr.J.Prakasam , Advocate SR.No. 103575 103577

Crl.R.C.Nos.1444 & 1445 of 2012

A.SK(04/02/2020)