



BAIL SLIP

The Petitioner/Accused viz., Bakrutheen Ali Ahamed was released on bail as per order of this Court dated 10/12/2012 in Crl.MP.No. 1 & 1/2012 in Crl.R.C.No.1466 & 1468/2012 respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.Nos.1466 and 1468 of 2012

Bakrutheen Ali Ahamad .. Petitioner
in both the revisions

Vs.

Maruthi Electricals
A Registered Partnership Firm
Represented by its Power of Attorney and Accountant
S.Gopalakrishnan
Son of P.Sundararajan
117, Mettur Road
Erode - 638 011

.. Respondent
in both the revisions

Crl.R.C.No.1466 of 2012 : Criminal Revision Petition filed under Section 397 r/w. 401 Cr.P.C to set aside the conviction imposed in the judgment dated 01.10.2012 made in C.A.No.155 of 2011 on the file of the II Additional District Sessions Judge, Erode confirming the conviction imposed in judgment dated 29.11.2011 made in S.T.C.No.95 of 2011 on the file of the Judicial Magistrate, FTC No.I, Erode.

Crl.R.C.No.1468 of 2012 : Criminal Revision Petition filed under Section 397 r/w. 401 Cr.P.C to set aside the conviction imposed in the judgment dated 14.09.2012 made in C.A.No.154 of 2011 on the file of the II Additional District Sessions Judge, Erode confirming the conviction imposed in judgment dated 29.11.2011 made in S.T.C.No.93 of 2011 on the file of the Judicial Magistrate, FTC No.I, Erode.

For Petitioner : Mr.M.Guruprassd
For Respondents : Mr.V.S.Kesavan



COMMON ORDER

These Criminal Revisions have been preferred challenging the judgments and orders dated 01.10.2012 and 14.09.2012 made in C.A.No.155 of 2011 and C.A.No.154 of 2011 respectively, passed by the II Additional District Sessions Judge, Erode confirming the conviction and sentence passed by the Judicial Magistrate, FTC No.I, Erode dated 29.11.2011 made in S.T.C.Nos.95 and 93 of 2011.

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

3. It is the case of the complainant that he is the Accountant in Maruthi Electricals, a partnership firm; partners of the firm have given him the authorization to prosecute the case vide Ex.P1; Maruthi Electricals is in the business of selling electrical items; the accused used to purchase electrical items on credit basis from Maruthi Electricals vide Statement of Account (Ex.P11 in S.T.C.No.95 of 2011 and Ex.P10 in S.T.C.No. 93 of 2011) and bills (Ex.P13 in S.T.C.No.95 of 2011 and Ex.P12 in S.T.C.No. 93 of 2011); towards the purchases made by the accused, a sum of Rs.4,29,051/- was due towards which accused gave five cheques for a total amount of Rs.3,35,536/-. The five cheques are:

- i) Cheque No.002787 dated 22.06.2009 for Rs.74,222/- (Ex.P2 in S.T.C.No.95 of 2011)
- ii) Cheque No.002789 dated 30.06.2009 for Rs.64,667/- (Ex.P3 in S.T.C.No.95 of 2011)
- iii) Cheque No.002790 dated 07.07.2009 for Rs.64,667/- (Ex.P4 in S.T.C.No.95 of 2011)
- iv) Cheque No.002791 dated 14.07.2019 for Rs.65,990/- (Ex.P2 in S.T.C.No.93 of 2011)
- v) Cheque No.002792 dated 21.07.2019 for Rs.65,990/- (Ex.P3 in S.T.C.No.93 of 2011).

4. The complainant presented all the five cheques and they were all returned with the endorsement "Funds Insufficient" vide return memos, which were marked as exhibits in both the cases. The complainant issued a statutory demand notice dated 03.10.2009, one to the office address of the accused and the other to the residential address of the accused. The one that was sent to the residential address was returned unserved. Since the accused did not comply with the demand, the complainant filed two complaints in S.T.C.No.95 of 2011 (for three cheques) and S.T.C.No.93 of 2011 (for two cheques), in view of Section 219 Cr.P.C, before the Judicial Magistrate (Fast Track Court I), Erode.

5. The complainant examined himself as PW1 and marked Exs.P1 to P13 in S.T.C.No.95 of 2011 and Exs.P1 to P12 in



S.T.C.No.93 of 2011. When the accused was questioned under Section 313 Cr.P.C, he denied the allegations and did not explain the circumstances under which the five cheques were given to the complainant. The accused examined himself as DW1 in both the cases. No document was marked on the side of the accused.

6. After considering the evidence on record and hearing either side, the trial Court passed judgments and orders separately in S.T.C.No.95 of 2011 and S.T.C.No.93 of 2011 on 29.11.2011 convicting and sentencing the accused under Section 138 of the Negotiable Instruments Act, 1881, as follows:

Calender Case	Sentence
S.T.C.No.95 of 2011	5 months Simple imprisonment and fine of Rs.1000/-, in default to undergo one month simple imprisonment
S.T.C.No..93 of 2011	5 months Simple imprisonment and fine of Rs.1000/-, in default to undergo one month simple imprisonment

7. Challenging the conviction and sentence, the accused filed two appeals in C.A.Nos.155 of 2011 and 154 of 2011, which were dismissed by II Additional Sessions Court, Erode on 01.10.2012. Hence the accused has filed two criminal revisions before this Court, namely CrI.R.C.Nos.1466 and 1468 of 2012. Since the facts are common to both the cases, this common order is passed.

8. Heard Mr.M.Guruprasad, learned counsel for the petitioner/accused and Mr.V.S.Kesavan, learned counsel for the respondent / complainant.

9. 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. "

(emphasis supplied)

10. Mr.M.Guruprasad contended that the complainant has failed to prove the debt satisfactorily inasmuch as the invoices and bills do not contain the signature of the accused.

11. This Court carefully perused the evidence on record. The accused has not denied his signature in the cheques. In his evidence he has stated that he was purchasing electrical items from the complainant, but after sometime, there were some disputes and hence, he stopped purchasing from them and started purchasing materials from one Venkatraman; that he had given the impugned five cheques to Venkatraman as security; that he has paid all dues to Venkatraman, despite which Venkatraman has handed over the five cheques to the present complainant with which the prosecution has been launched. The fact remains that the accused has not denied his signature in the five cheques. All the five cheques have been drawn in the name of Maruthi Electricals. The accused has also admitted that he was doing business with Maruthi Electricals.

12. As regards the contention of Mr.Guruprasad that the invoices and bills do not contain the signature of the accused, the invoices and bills will normally accompany the goods as they are required to be shown to the Sales Tax officials during surprise inspection. The evidence of complainant shows that they were having a running account with the accused. Except saying that he had given the cheques to Venkatraman and that Venkatraman had in turn given the cheques to the complainant, the accused has not produced any shred of material in support of this defence. Therefore, both the Courts below have rightly rejected the defence raised by the accused. It must be remembered that the accused had not even replied to the statutory demand notice that was issued by the complainant. All these facts put together show that the defence put forth by the accused is without any legal basis.

In the result, both the revisions are dismissed. It is always open to the parties to file an application under Section 147 of the NI Act for compounding the offences at any time before the completion of serving the sentence by the accused. The trial Court is directed to secure the accused and commit him in prison for serving the sentence. Registry is directed to send the original records to the appellate Court and the trial Court forthwith.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gpa



To

1. II Additional District Sessions Judge
Erode

2. The Judicial Magistrate
FTC No.I, Erode.

3. The Chief Judicial Magistrate,
Erode.

4. The Deputy Registrar, } with a direction to send
Criminal Section, } the original records to the
High Court, Madras. } two Courts below forthwith.

5. The Public Prosecutor,
High Court, Madras - 600 104.

6. The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to Mr.M.Guruprasad, Advocate, S.R.No.96292

Crl.R.C.Nos.1466 and 1468 of 2012

SPD(CO)
GN(23/01/2020)