Bail Slip

The appellant/Accused Viz., A.U.Jambu S/o Utham was directed to be released on bail as per order dated 14/12/2012 in MP 1/2012 in Crl.R.C.No.1470 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.1470 of 2012

A.U.Jambu .. Petitioner/Appellant/Accused

Vs.

P.R.Balaji .. Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 18.07.2012 passed in C.C.No.302 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court - Magisterial Level No.II), Coimbatore, confirmed by the judgment and order dated 11.10.2012 passed in C.A.No.234 of 2012 on the file of the V Additional District and Sessions Court (Fast Track Court No.III), Coimbatore.

For Petitioner : Ms.V.Bhavani for Mr.H.Rajasekar

For Respondent : Mrs.Zeenath Begam for Mr.T.Murugamanickam

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 18.07.2012 passed in C.C.No.302 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court - Magisterial Level No.II), Coimbatore, confirmed by the judgment and order dated 11.10.2012 passed in C.A.No.234 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. It is the case of the complainant that he is a medical practitioner attached to Kovai Medical Centre Hospital and in the said hospital building, the accused was running an "E-Shop" and thus, the complainant got acquainted with him; the accused borrowed a sum of Rs.48,000/- from the complainant on 13.04.2007 and promised to return the said amount within three months; towards the said debt, the accused gave a cheque dated 13.07.2007 bearing No.341738 for a sum of Rs.48,000/-, drawn on Bank of Baroda, R.S.Puram; when the complainant presented the said cheque, it was returned with the endorsement "Account Closed" on 17.07.2007; therefore, the complainant issued a statutory demand notice dated 11.08.2007, on receipt of which, the accused sent a reply notice dated 24.08.2007 repudiating the debt; thereafter, the accused met the complainant through common friends and agreed to amicably settle the issue; the accused gave a sum of Rs.8,000/- in cash in September 2007 and for the balance sum of Rs.40,000/-, he gave six cheques, the details of which are as follows:

Sl.No.	Cheque bearing No.	Cheque amount	Cheque dated	Drawn on
1	019096	Rs.5,000/-	12.09.2007	Jammu & Kashmir Bank
2	019097	Rs.5,000/-	17.09.2007	Jammu & Kashmir Bank
3	019098	Rs.7,500/-	26.09.2007	Jammu & Kashmir Bank
4	019099	Rs.7,500/-	06.10.2007	Jammu & Kashmir Bank
5	015363	Rs.10,000/-	10.10.2007	Jammu & Kashmir Bank
6	015362	Rs.5,000/-	13.10.2007	Jammu & Kashmir Bank

At that time, the accused took back the earlier cheque dated 13.07.2007 for the sum of Rs.48,000/-; out of the six cheques, two cheques viz., the cheque dated 12.09.2007 and the cheque dated 17.09.2007 were honoured and the other four cheques (Exs-P1 to P4) were presented by the complainant on 17.11.2007, but, they were dishonoured and returned with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P5) dated 19.11.2007; therefore, the complainant issued a statutory demand notice (Ex-P6) dated 29.11.2007, which was received by the accused on 04.12.2007 vide postal acknowledgement card (Ex-P7); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.523 of 2008 for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") before the Judicial Magistrate No.VI, Coimbatore, against the accused. Thereafter, the case was transferred to the file of the Judicial Magistrate Court (Fast Track Court – Magisterial Level No.II), Coimbatore and re-numbered as C.C.No.302 of 2011.

4. Before the trial Court, the complainant examined himself as PW1 and marked seven 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 cheques executed by him came into the hands of the complainant. On behalf of the accused, no witness was examined nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.07.2012 in C.C.No.302 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo three months rigorous imprisonment.

7. The appeal in C.A.No.234 of 2012 filed by the accused was dismissed by the V Additional District and Sessions Court (Fast Track Court No.III), Coimbatore, on 11.10.2012.

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.V.Bhavani, learned counsel representing Mr.H.Rajasekar, learned counsel on record for the accused and Mrs.Zeenath Begam, learned counsel representing Mr.T.Murugamanickam, learned counsel on record for the complainant.

10. 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 &

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1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

> 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 complainant has not filed any document like promissory note, etc., in order to prove the debt. She also submitted that the accused had not signed the impugned cheques (Exs-P1 to P4).

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

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

14. The complainant, in his evidence, has stated about the loan of Rs.48,000/- taken by the accused, the dishonour of the cheque dated 13.07.2007, the issuance of the statutory demand notice dated 11.08.2007, the receipt of the reply notice dated 24.08.2007, the compromise arrived at between him and the accused in September 2007, the payment of Rs.8,000/- by the accused, the issuance of the six cheques for a sum of Rs.40,000/-, the clearance of the two cheques, the dishonour of the four cheques (Exs-P1 to P4), the issuance of the statutory demand notice (Ex-P6) dated 29.11.2007, the receipt of it and the failure of the accused to comply with the demand.

15. In the cross-examination of the complainant, the accused suggested that he had not signed the four impugned cheques (Exs-P1 to P4). However, the accused filed C.M.P.No.1474 of 2011 under Section 45 of the Evidence Act, for sending the impugned cheques (Exs-P1 to P4) to the handwriting expert for opinion. In that application, the accused wanted to have the writings on the cheques (Exs-P1 to P4) alone be compared and not the signature in them. Moreover, the bank did not return the cheques (Exs-P1 to P4) on the ground “Signature Differs”, but, on the ground “Funds Insufficient”. That apart, under Section 20 of the NI Act, the cheque can be filled by anyone, provided, it has been signed by the drawer.

16. At this juncture, it is apropos to allude to the very recent judgment of the Supreme Court in Bir Singh Vs. Mukesh

Kumar[3], wherein, it has been held as under:

> "33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
>
> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

Therefore, when the accused has admitted his signature in the cheques, the burden is on him to prove that the cheques were not issued for a 'legally enforceable debt'.

17. 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.

18. 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

3 (2019) 4 SCC 197
4 (2010) 11 SCC 441

report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1470 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

To

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

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

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

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

+1cc to Mr.Zeenath Begum, Advocate Sr.102583
+1cc to Mr.H.Rajasekar, Advocate Sr.102134

Crl.R.C.No.1470 of 2012

kk[co]
srg 22/01/2020