

Bail Slip

The Accused/Appellant was directed to be released on bail as per order of this Court dated 20.12.2012 made in MP.Nos.1,1 and 1 of 2012 in CrI RC.Nos.1515, 1517 and 1520 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
26.11.2019	02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. R.C. NOS. 1515, 1517 & 1520 OF 2012

N.Palanisamy @ Ramesh :Petitioner in all the revisions

- Vs -

1. A.Sivasubramaniam
S/o Ayyasamy, Sri.Muthusamy
Managing Director of
M/s.Karikalliamman Spinning Mills (P) Ltd.
118, N.M.S.Compound, Erode.

2. Sate, rep. By Public Prosecutor
Erode District,
Erode. : Respondents in all revisions

Criminal Revision Cases filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 13.08.2012, passed by the learned II Addl. District & Sessions Judge, Erode, in C.A. Nos.15, 16 & 17 of 2012.

For Petitioner (in all CrI RC) : Mr.S.K.Rakhunathan

For Respondents (in all CrI RC) : Mr.I.C.Vasudevan for R-1

COMMON ORDER

The present revision petitions have been filed against the confirmation of the conviction and sentence passed by the II Addl. District & Sessions Judge, Erode, in C.A. Nos.15, 16 and 17 of 2012.

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 they are into manufacture of yarn and the accused was the proprietor of Planet Creation and was in the business of selling yarn. In connection with his business, the accused purchased yarn from the complainant on various dates, towards which he was due a sum of Rs.18,50,053/=. In discharge of the said debt, the accused issued eight cheques drawn on Dhanalakshmi Bank, which are as under :-

S. No.	Description
1	19.4.2006 Dated Rs.2,00,000/-
2	26.4.2006 Dated Rs.2,00,000/-
3	3.5.2006 Dated Rs.2,00,000/-
4	10.5.2006 Dated Rs.2,00,000/-
5	17.5.2006 Dated Rs.2,00,000/-
6	24.5.2006 Dated Rs.2,00,000/-
7	31.5.2006 Dated Rs.2,00,000/-
8	7.6.2006 Dated Rs.4,00,000/-

4. When the complainant presented the eight cheques for collection on 28.06.06, through Corporation Bank, Tirupur Branch, they were returned unpaid with endorsement "Funds Insufficient" on 29.06.06. The complainant issued a statutory demand notice dated 6.7.06, which was received by the accused on 10.07.06. The accused gave Rs.50,000/- on 10.07.06 towards the total dues, but did not pay the balance. Hence, the complainant initiated three prosecutions, viz., c.C. Nos.423/06 (3 cheques),

C.C. No.424/06 (3 cheques) and C.C. No.425/06 (2 cheques) before the Judicial Magistrate No.II, Erode.

5. The complainant examined himself as P.W.1 in each of the case and marked Exs.P-1 to P-17. In the cross examination of the complainant, the defence marked Exs.D-1 to D-6. When the accused was questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the same and did not offer any explanation as to the circumstances under which the cheques drawn by the accused came to the custody of the complainant. No witness was examined on the side of the accused. After consideration of the evidence on record and hearing either side, the trial court, by separate judgment and orders, all dated 20.12.2011, convicted the accused and sentenced him in each case to undergo simple imprisonment for a period of six months and to pay the cheque amounts as compensation to the complainant. The three appeals in C.A. Nos.15/12, 16/12 and 17/12, filed against the said orders, were dismissed by the learned II Addl. District & Sessions Court, Erode, on 13.8.12. Aggrieved by the concurrent findings of the two courts below, the accused has filed the present three revision petitions u/s 397 r/w 401 Cr.P.C.

6. Heard the learned counsel appearing for the petitioner/accused and the respondent/complainant, and perused the materials available on record as also the judgments of the courts below.

7. Before advertng to the rival submissions, it may be apposite to refer the the ratio laid down with reference to scope and power of this Court under the revisionary jurisdiction. 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 & Ors. (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)

8. It is the basic contention of the learned counsel appearing for the accused that the eight cheques were given as security to the complainant for the future supplies of yarn, which cheques were misused by the complainant. A perusal of the deposition of P.W.1 reveals that he has deposed about the business transaction with the accused, the due of Rs.18,50,053/= for the purchase of yarn, the issuance of the eight cheques, their presentation and dishonour, issuance of the statutory notice, receipt of the same and the failure of the accused to comply with the demands.

9. The accused had taken a defence that the cheques were given only as security. In other words, the accused had not denied his signature in the cheques and had only stated that they were given as security. Further, the complainant has marked the invoices, viz., Ex.P-16 series (20 pages) and delivery notes, viz., Ex.P-17 series (14 Nos.) to show that yarn was in fact supplied to the accused. Yet another defence that was taken by the accused was that the complainant had supplied yarn only to M/s.Regency Yarn from whom the accused had purchased and that there was no privity of contract between the accused and the complainant. Except making this suggestion to P.W.1, no credible material was placed by the accused to probabalise this defence. Whereas, the invoices (Ex.P-16) clearly show the name of the concern of the accused, viz., Planet Creations. In Ex.D-4, which is a notice dated 19.6.06, that was sent by the accused to the complainant, it is stated in para-3 that the accused had returned Rs.5 Lakhs to the complainant in June, 2006 and, thereafter, had given another Rs.1 Lakh to the complainant. It is further stated in Ex.D-4 that the business of the accused is very bad and as and when his business revives, he will repay the dues. This admission in Ex.D-4 goes clearly against the defence of the accused that there was no amount due to the complainant. All these aspects have been gone into thoroughly by the two courts below and, hence, this Court does not find any infirmity in the findings of the courts below warranting interference.

10. In the result, these criminal revision petitions are dismissed. 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. 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.1515, 1517 &

1520 of 2012. The trial court is directed to issue warrant to secure the accused for undergoing the sentence. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

GLN

To

- 1.The II Addl. District & Sessions Judge, Erode.
- 2.The Judicial Magistrate No.II, Erode.
- 3.The Chief Judicial Magistrate, Erode.
- 4.The Public Prosecutor, Erode District, Erode.
- 5.The Public Prosecutor, High Court, Madras-104.

Copy to: The Section Officer, Criminal Section,
High Court, Madras-104.

The Assistant Registrar, Criminal Section,
High Court, Madras-104.

+3CCs to Mr.I.C.Vasudevan, Advocate, SR.No.99321, 99322 & 99323.
+1CC to Mr.S.K.Rakhunathan, Advocate, SR.No.100818.

सत्यमेव जयते

ORDER IN
CRL. R.C. NOS. 1515, 1517 &
1520 OF 2012

EV(CO)
CSR: 08/01/2020

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