

Bail Slip

The Petitioner/Accused viz Suresh S/o. Gandhinathan aged 44 years was released on bail as per order of this Court dated 20.12.2012 in Crl.M.P. 1/2012 in Crl.R.C. 1527/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.11.2019

DELIVERED ON: 15.11.2019

CORAM:

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

Crl.R.C. No.1527 of 2012

Suresh

Petitioner/Appellant/Accused

vs.

Gunasekar

Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to call for the records relating to the judgment and order dated 17.10.2012 passed in Crl.A. No.87 of 2011 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam in confirming the judgment and order dated 02.03.2011 passed in C.C. No.84 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Neyveli and set aside the same.

For petitioner: Mr. P. Mani

For respondent: Mr. A. Arasu Ganesan

ORDER

Challenge in this criminal revision is to the judgment and order dated 17.10.2012 passed in Crl.A. No.87 of 2011 on the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam confirming the judgment and order dated 02.03.2011 passed in C.C. No.84 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Neyveli.

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

3 It is the case of the complainant that the accused and he were friends; on 20.09.2007, the accused took a hand loan of Rs.1.40 lakhs agreeing to return the said amount in two months and on the same day, issued a post-dated cheque for Rs.1.40 lakhs bearing the date 23.11.2007 (Ex.P.1), which, when presented by the complainant, was dishonoured on 24.11.2007 vide bank memo (Ex.P.3); the complainant issued a statutory demand notice dated 03.12.2007 (Ex.P.4), which was received by the accused vide proof of service issued by the postal department (Ex.P.5); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C. No.84 of 2008 before the District Munsif-cum-Judicial Magistrate, Neyveli, under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

4 The complainant examined himself as P.W.1, Balaji, Branch Manager of the bank, where, the complainant had his account, as P.W.2 and Ramasamy, Branch Manager of the bank, where, the accused had his account, as P.W.3. and marked Exs.P.1 to P.5.

5 When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he gave his explanation, which will be discussed later. Except marking the bank account statement of the complainant, no document was marked by the accused.

6 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 02.03.2011 in C.C. No.84 of 2008, convicted the accused of the offence under Section 138 of the NI Act. But, on the date of judgment, the accused did not appear. Hence, the trial Court sentenced him to undergo simple imprisonment for one year and pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months. It was further ordered that out of the fine amount of Rs.5,000/-, a sum of Rs.2,500/- shall be paid as compensation to the complainant.

7 At this juncture, it may be relevant to extract paragraph 22 of the judgment and order of the trial Court as under:

"22. The accused is well known that this case is posted today for judgment, however, in order to delay the pronouncement of the judgment, he voluntarily failed to appear before this Court. Further, there is no representation on the side of the accused. Hence, it is ordered to issue NBW as against the accused."

8 The appeal in CrI.A. No.87 of 2011 that was preferred by the accused was dismissed on 17.10.2012 by the III Additional District and Sessions Court, Cuddalore.

9 Assailing the correctness of the concurrent findings of fact arrived at by the two Courts below, the accused has preferred the instant criminal revision invoking Section 397 r/w Section 401 Cr.P.C.

10 Heard Mr. P. Mani, learned counsel for the accused and Mr.A.Arasu Ganesan, learned counsel for the complainant.

11 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 Kuldeep 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)

12 Coming to the case at hand, the learned counsel for the accused submitted that the burden under Section 139 of the NI Act has been discharged by the accused in the cross-examination of the complainant and therefore, the conviction of the accused is illegal.

13 On a perusal of the evidence on record, it is seen that the accused had admitted his signature in the impugned cheque (Ex.P.1). His defence is that the complainant and one Ramamoorthy were into finance business; the accused had borrowed a sum of Rs.40,000/- from Ramamoorthy; at that time, the said Ramamoorthy collected a blank, but, signed cheque from the accused as security; the accused discharged the loan to Ramamoorthy, despite which, Ramamoorthy demanded exorbitant interest, which, the accused was not able to pay; therefore, Ramamoorthy handed over the impugned cheque (Ex.P.1) to the complainant herein for launching the present prosecution.

14 This Court perused the impugned cheque (Ex.P.1) and did not find any patent discrepancy in it. Except suggesting the defence theory in the cross-examination of the complainant

(P.W.1) and reiterating it in the Section 313 Cr.P.C. statement, the accused had not produced any material to probabalise the defence. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, yet, in this case, even that has not been done. In such perspective of the matter, this Court does not find any infirmity in the findings arrived at by the two 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 presence of the accused and commit him to prison for serving out the period of sentence. Liberty is given to the accused to approach the trial Court for compounding the offence under Section 147 of the NI Act, even after he is taken into custody. 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.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

cad
To

1 The III Additional District and Sessions Judge
Cuddalore
at Virudhachalam

2 The District Munsif-cum-Judicial Magistrate
Neyveli

3 The Deputy Registrar (Crl. Side)

High Court of Madras

Chennai 600 104

} with a direction to
transmit the
original records to
the respective
Courts, forthwith

4.The Chief Judicial Magistrate
Cuddalore (for information)

Crl.R.C. No.1527 of 2012

SPD(CO)
SP(17/12/2019)