

Bail Slip

The Petitioner/Accused Viz., Raman, S/O Managkatti was directed to be released on bail as per order dated 21/12/2012 made in Crl.M.P.No.1/2012 in Crl.R.C.1558 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1558 of 2012

Raman Petitioner/Accused

Vs

1.Sudha

2.The Public Prosecutor
Cuddalore District
Cuddalore

.... Respondents/Complainants

Criminal Revision preferred under Section 397 read with Section 401 Cr.P.C. to set aside the judgment and order dated 30.11.2012 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in C.A.No.81 of 2011 confirming the judgment and order dated 18.10.2011 passed by the District Munsif-cum-Judicial Magistrate, Neyveli in S.T.C.No.283 of 2010.

For Petitioner : Mr.T.Sivagnana Sambandan

For 1st Respondent : Mr.A.Kumar

For 2nd Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

O R D E R

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

2.It is the case of the complainant that, she knows the accused through his brother-in-law and that, on 26.09.2009, the accused borrowed Rs.1,50,000/- from her, agreeing to repay the

same within a month; the accused did not repay the amount, the complainant started demanding repayment and therefore, the accused gave a cheque dated 27.10.2009 for Rs.1,50,000/- (Ex.P1) drawn on Canara Bank, Neyveli branch; the complainant presented the said cheque on 27.10.2009 and the same was returned with the endorsement "exceeds arrangement" vide banker's memo dated 28.10.2009 (Ex.P2); the complainant issued a statutory demand notice dated 24.11.2009 (Ex.P3), which was received by the accused vide postal acknowledgment card (Ex.P4); the accused issued a reply notice dated 11.12.2009 (Ex.P5) repudiating the debt; therefore, the complainant initiated a prosecution in S.T.C.No.283 of 2010 before the District Munsif-cum-Judicial Magistrate, Neyveli against the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

3.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

4.The complainant examined herself as P.W.1 and marked Exs.P1 to P5. She also examined N.S.Balaji, Branch Manager, Canara Bank as P.W.2. On the side of the complainant, Exs.P1 to P7 were marked. No witness was examined on the side of the accused nor any document marked.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.10.2011 in S.T.C.No.283 of 2010, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment. Out of the fine of Rs.5,000/-, a sum of Rs.2,500/- was directed to be paid as compensation to the complainant. The appeal in C.A.No.81 of 2011 that was filed by the accused was dismissed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam on 30.11.2012. Challenging the concurrent findings of fact of the two Courts below, the accused has filed the present criminal revision under Section 397 read with Section 401 Cr.P.C.

7.Heard Mr.T.Sivagnana Sambandan, learned counsel for the accused and Mr.Mr.A.Kumar, learned counsel for the complainant.

8.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)

9.Sudha (P.W.1/complainant), in her evidence, has stated about the loan of Rs.1,50,000/- that was taken by the accused on 26.09.2009, the issuance of the impugned cheque towards the debt, its presentation and dishonour, the issuance of legal notice dated 24.11.2009 and the receipt of reply notice dated 11.12.2009 from the accused.

10.In the reply notice dated 11.12.2009 (Ex.P5), the accused has taken a stand that he had borrowed only Rs.40,000/- from the complainant's husband and at the time of taking the loan, he had handed over two signed promissory notes and three signed, but, unfilled cheques as security and that, he had paid Rs.1,25,000/- towards the loan, despite which, the complainant's husband did not return the documents and has misused one cheque to file the present prosecution. Except suggesting his defence to the complainant in the cross-examination, the accused has not placed any satisfactory material in support of this defence. Both the Courts below have appreciated the evidence adduced by the complainant in the right perspective and this Court has no good reasons to differ.

11.Mr.Sivagnana Sambandan submitted that the complaint in this case must contain a verification and in the absence of such a verification, the very initiation of the prosecution is void. In support of this submission, he placed strong reliance on the judgment of the Bombay High Court in Roy Joseph Creado & Others Vs. Sk.Tamisuddin (Criminal Application No.1653 of 2003 decided on 01.02.2008). The said judgment arose in a quash proceedings and the High Court found that the complainant therein had not even signed the complaint. In the said judgment, there is a reference to the judgment of the Supreme Court in Sabitha Ramamurthy and another Vs. R.B.S.Channabasavaradhya (2006 AIR

SCW 4582). Even in that judgment, the Supreme Court has held that without verification in the complaint, the entire prosecution should fail.

12.This Court called for the trial Court records and perused the original complaint. The original complaint is in Tamil and it bears the signature of the complainant Sudha in all the pages. Unlike the Code of Civil Procedure, where the format for a plaint has been prescribed, there is no such prescription for a complaint either in the Code of Criminal Procedure or in the Criminal Rules of Practice. The requirement of Section 142 of the NI Act is that, the complaint should be in writing. The NI Act also does not prescribe any format for writing a complaint. That apart, the sworn statement of the complainant has been recorded by the trial Court before the issuance of process. Under such circumstances, the absence of verification in the complaint can be no stretch of imagination, be said to be fatal to the case of the complainant.

13.Mr.Sivagnana Sambandan submitted that in the proof affidavit filed by the complainant, she has stated that the statutory notice was issued on 24.12.2009, whereas in the complaint, she has given the date as 24.11.2009. This Court perused the statutory demand notice (Ex.P3) and it bears the date 24.11.2009. Along with the statutory demand notice (Ex.P3), the postal receipt for having sent the notice by registered post has been annexed and on that also, the date is 24.11.2009. That apart, the accused has sent a reply notice dated 11.12.2009. If the statutory notice had been sent only on 24.12.2009, where is the question of the accused sending the reply notice on 11.12.2009. Hence, it is obvious that the reference to 24.12.2009 in the proof affidavit of the complainant, is a typographical error and we cannot make much ado of it. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference.

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In the result, this Criminal Revision is dismissed being devoid of merits. The trial Court is directed to secure the accused and commit him in prison to undergo the remaining period of sentence, if any. 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 her 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.No.1558 of 2012. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The III Additional District and Sessions Judge,
III Additional District and Sessions Court,
Cuddalore at Virudhachalam
- 2.The Additional District Munsif-cum-Judicial Magistrate
Neyveli.
- 3.The Chief Judicial Magistrate,
Cuddalore. (for Information)
- 4.The Public Prosecutor,
Cuddalore, Cuddalore District.
- 5.The Public Prosecutor,
Madras, Madras District.

Copy to

The Deputy Registrar,
Criminal Side, High Court, Madras.

+1cc to Mr.A.Kumar, Advocate Sr.100615

CRL.R.C.No.1558 of 2012

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srg 10/01/2020