

Bail Slip

The Appellant/Petitioner herein viz., P.Ramasamy, S/o.Palaniappa Asari, was directed to be released on bail as per order dated 28/12/2012 made in CrI.MP.No.1 of 2012 in CrI.RC.No.1580 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2019

PRONOUNCED ON : 22.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1580 of 2012

P.Ramasamy ... Petitioner/Accused

Vs.

V.Venkatachalam ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 28.02.2012 passed in C.C.No.465 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 11.10.2012 passed in C.A.No.99 of 2012 on the file of the IV Additional District and Sessions Court (Fast Track Court No.II), Coimbatore.

For Petitioner : Mr.S.Gunalan
and Mr.B.Gopalakrishnan

For Respondent : Notice sent. Service awaited.

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 28.02.2012 passed in C.C.No.465 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 11.10.2012 passed in C.A.No.99 of 2012 on the file of the IV Additional District and Sessions Court (Fast Track Court No.II), Coimbatore.

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

3. The facts of the case in a nutshell are as under:

3.1 It is the case of the complainant that one Saravana Kumar and the accused had borrowed from him a sum of Rs.1,00,000/- on 04.03.2007 and had executed a promissory note for the said amount. Since they did not make any payment, the complainant issued a notice dated 05.12.2007 (Ex-P6), calling upon them to return the amount. Thereafter, the accused and Saravana Kumar approached the complainant and came forward to settle the matter amicably, pursuant to which, the accused gave a cheque dated 03.10.2008 for a sum of Rs.1,10,000/- (Ex-P1) to the complainant. The complainant presented the impugned cheque (Ex-P1) on 05.01.2008 and the same was returned with the endorsement "Account Closed". Thereafter, the complainant issued a statutory demand notice dated 10.01.2008 (Ex-P4), which was not received by the accused and the postal cover got returned to the complainant on 05.02.2008. After waiting for fifteen days, the complainant initiated a prosecution in C.C.No.465 of 2011 (Old S.T.C.No.17 of 2008), which was tried by the Judicial Magistrate (Fast Track Court No.II), Coimbatore.

3.2 Before the trial Court, the complainant examined himself as PW1 and marked eight exhibits.

3.3 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the same and did not offer any explanation as to how the impugned cheque (Ex-P1) was signed by him and came into the hands of the complainant. On behalf of the accused, no witness was examined nor any document marked.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.02.2012 in C.C.No.465 of 2012, convicted the accused of the offence under Section 138 of the Negotiable Instruments, 1881 (for brevity "the NI Act") and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.3,000/-, in default to undergo three months simple imprisonment.

3.5 The appeal in C.A.No.99 of 2012 filed by the accused was dismissed by the IV Additional District and Sessions Court (Fast Track Court No.II), Coimbatore, on 11.10.2012.

3.6 Challenging the concurrent findings of fact arrived at by the Courts below, the accused is before this Court under Section 397 r/w 401 Cr.P.C.

4. At the time of admission on 28.12.2012, this Court, in M.P.No.1 of 2012 in CrI.R.C.No.1580 of 2012, suspended the sentence and ordered the release of the accused on bail. Notice has not been served on the complainant.

5. Heard Mr.S.Gunalan and Mr.B.Gopalakrishnan, learned counsel for the accused.

6. The learned counsel for the accused submitted that the complainant had not filed the promissory note that was executed by the accused and Saravana Kumar and therefore, the debt is not established. He further submitted that mere issuance of the cheque will not attract Section 139 of the NI Act, unless the complainant proves that the cheque was given towards a "legally enforceable debt". It is his further submission that the complainant, in his cross-examination, has stated that he does not know the father's name or the address of the accused and this only shows that the accused was not at all known to the complainant.

7. This Court gave its anxious consideration to the submissions made by the learned counsel for the accused.

8. Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High

¹ (2004)7 SCC 659

Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. (emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

9. It is the specific case of the complainant that the accused and Saravana Kumar had borrowed from him a sum of Rs.1,00,000/- and had executed a promissory note for the said amount; since they did not make any payment, the complainant issued a legal notice dated 05.12.2007 (Ex-P6) and only thereafter, the accused came forward to settle the matter amicably with the complainant and issued the impugned cheque dated 03.01.2008 (Ex-P1).

10. It may be relevant to state here that the two notices, viz., Ex-P7 dated 08.12.2007 and Ex-P4 dated 10.01.2008, were returned by the accused and the covers with the notices have been marked as exhibits. The accused has not taken a defence that the notices were sent to an unrelated address. Even in the complaint, the address of the accused is the same as that in the two legal notices. The complainant has received the cover with the postal endorsement, which shows that the counsel for the complainant has received back the unserved notice on 23.01.2008. Therefore, it cannot be stated that the complaint was filed even before the cause of action arose or was barred by limitation.

11. As regards the non-filing of the promissory note, it cannot be stated that the same is fatal to the case of the complainant. It is the specific stand of the complainant that, after he issued the legal notice dated 05.12.2007 (Ex-P6), the accused and Saravana Kumar came forward to settle the matter amicably and issued the impugned cheque (Ex-P1) for the sum of Rs.1,10,000/-. Further, the accused has not denied his signature in the cheque.

13. In the cross-examination of the complainant, the accused has suggested that his son-in-law had taken a loan from the complainant, for which, the impugned cheque (Ex-P1) was given as a security. Beyond making such a suggestion, the accused did nothing to show that his son-in-law had taken the loan from the complainant.

14. As held by the Supreme Court in Rangappa Vs Sri Mohan², the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, which has not been done in this case.

15. In view of the above discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

As a sequitur, 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 sentence. The Registry is directed to return the original records to the Courts below concerned, forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

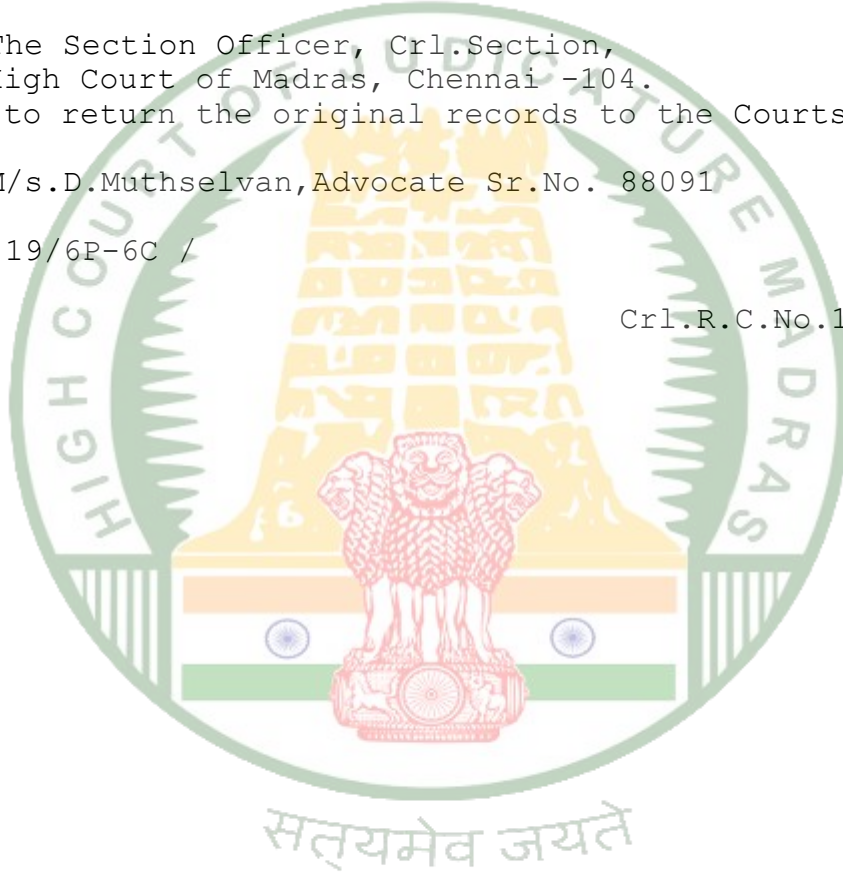
1. The Judicial Magistrate,
(Fast Track Court No.II), Magistrate Level
Coimbatore.
2. -Do-Thro' The Chief Judicial Magistrate,
Coimbatore.
3. The IV Additional District and Sessions Judge,
(Fast Track Court No.II),
Coimbatore.

Copy To: The Section Officer, Crl.Section,
High Court of Madras, Chennai -104.
(to return the original records to the Courts below)

+1 cc to M/s.D.Muthselvan, Advocate Sr.No. 88091

AKM/03.12.19/6P-6C /

order in
Crl.R.C.No.1580 of 2012



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