

Bail Slip

The Appellant/Accused, namely K.M.Natarajan was directed to be released on bail as per the Court dated 20.12.2012 in CRL MP.NO.1/12 IN Crl.R.C.No.486 of 2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2019

PRONOUNCED ON : 21.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.486 of 2012

K.M.Natarajan

...

Petitioner/Appellant/
Accused

Vs.

O.K.Vijaya Kumar

...

Respondent/ Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 12.05.2010 passed in S.T.C.No.3721 of 2008 on the file of the Judicial Magistrate, Tiruchengode, confirmed by the judgment and order dated 06.03.2012 passed in C.A.No.50 of 2010 on the file of the Additional District Court, Namakkal.

For Petitioner : Mr.T.Arockiadass

For Respondent : Mr.C.D.Johnson
for Mr.S.Noorudeen

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O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 12.05.2010 passed in S.T.C.No.3721 of 2008 on the file of the Judicial Magistrate, Tiruchengode, confirmed by the judgment and order dated 06.03.2012 passed in C.A.No.50 of 2010 on the file of the Additional District Court, Namakkal.

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

3. It is the case of the complainant that he is the Proprietor of the K.V.Saravana Textiles, dealing in fabrics; the accused was the owner of Sri Maruti Traders and had purchased R.G. fabrics vide three invoices viz., Invoice No.44 dated 09.01.2008 for a sum of Rs.2,17,800/- (Ex-P8), Invoice No.45 dated 10.01.2008 for a sum of Rs.2,14,200/- (Ex-P9) and Invoice No.46 dated 11.01.2008 for a sum of Rs.2,13,300/- (Ex-P10) totalling Rs.6,45,300/-, towards which, the accused gave three cheques viz., cheque dated 18.03.2008 for a sum of Rs.2,00,000/- (Ex-P1), cheque dated 19.03.2008 for a sum of Rs.2,00,000/- (Ex-P2) and cheque dated 20.03.2008 for a sum of Rs.2,00,000/- (Ex-P3); the accused requested the complainant not to present the cheques on the due dates and therefore, the complainant presented the cheques on 31.07.2008 and all the three cheques were returned on 02.08.2008 with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P4); therefore, the complainant issued statutory demand notice dated 27.08.2008 (Ex-P6), which was refused by the accused and therefore, the cover returned, which was marked as Ex-P7.

4. Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.3721 of 2008 before the Judicial Magistrate, Tiruchengode, for the offence under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act").

5. Before the trial Court, the complainant examined himself as PW1 and marked eleven exhibits.

6. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the allegations and did not give any explanation as to the circumstances, under which, the cheque issued by him came into the hands of the complainant. On behalf of the accused, no witness was examined, however, five exhibits were marked.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 12.05.2010 in S.T.C.No.3721 of 2008, convicted the accused of the offence under Section 138 of 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 one month simple imprisonment.

8. The appeal in C.A.No.50 of 2010 filed by the accused was dismissed by the Additional District Court, Namakkal, on

06.03.2012.

9. Challenging the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision under Section 397 r/w 401 Cr.P.C.

10. Heard Mr.T.Arockiadass, learned counsel for the accused and Mr.C.D.Johnson, learned counsel representing Mr.S.Noorudeen, learned counsel on record for the complainant.

11. Before advertng 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 Kumar², 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. The complainant, in his evidence, has stated about the supply of fabrics, the invoices (Exs-P8 to P10) raised for it, the issuance of three cheques (Exs-P1 to P3) by the accused, their presentation and dishonour, the issuance of the statutory demand notice (Ex-P6) and the failure of the accused to comply with the demand.

13. In the cross-examination of the complainant, the accused took the defence that the complainant's wife was running a finance company; he borrowed money from there; at that time, he issued the impugned cheques; he had settled his accounts with the finance company and the complainant has misused the cheques given by him.

14. Though the complainant has admitted that his wife is one of the parters in the finance company, he has clearly stated that the accused had purchased fabrics under the three invoices and had issued the impugned cheques towards settlement of the due.

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15. The learned counsel for the accused submitted that the complainant has admitted that the receipts accompanying the goods supplied to the accused were destroyed, therefore, the complainant has not shown the sale to the Sales Tax Department and hence, the complainant's case has not been satisfactorily proved.

16. This Court is unable to countenance the submission made by the learned counsel for the accused. Just because the complainant had not given the correct returns to the Sales Tax department, that will not absolve the accused from the liability, especially, when the accused has not denied the execution of the impugned cheques.

17. The learned counsel for the accused further submitted that the accused was not into the fabric business at all, as alleged by the complainant and he (accused) was only doing business in yarn. Unfortunately, the learned counsel for the accused has not placed any satisfactory materials to show that the accused was not into fabric business.

18. As regards the contention of the learned counsel for the accused that the impugned cheques were given to the complainant's wife while taking loan, no satisfactory materials have been placed on record in this regard. The accused has not even stated in his statement under Section 313 Cr.P.C., as to how much loan he had taken from the finance company of the complainant's wife, when it was returned, when the impugned cheque was given to the finance company, etc.

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

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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

report to the Assistant Registrar (Crl. Section), who shall make it form part of the records in Crl.R.C.No.547 of 2012. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with the 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(CS)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Judicial Magistrate,
Tiruchengode.
2. Do thro the Chief Judicial Magistrate, Namakkal
- 3.The Additional District Judge,
Namakkal.
- 4.The Deputy Registrar, with a direction to return the
(Crl. Section), original records to the Courts
Madras High Court, below concerned
Chennai - 600 104.

+lcc to Mr.C.D.Johnson , Advocate SR.No. 96947

Crl.R.C.No.486 of 2012

A.SK(27/12/2019)

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