Bail Slip

The Petitioners /Accused No.2&3,namely 1.Murugan S/o.Krishnan 2.S.G. Sairam S/o.Gopal Chettiar aged 50 Years and released on bail as per order of this Court in Crl MP.no.1/12 in Crl.R.C. No.526 of 2012 MP.No.1/12 in Crl R.C.1370/12 order dated 25.05.2012 and 15.11.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.11.2019

DELIVERED ON: 29.11.2019

CORAM:

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

Crl.R.C. Nos.526 & 1370 of 2012

Murugan Petitioner in Crl.R.C. No.526/2012

1 S.L. Enterprises
(a partnership firm by Sairam)
No.7, Suban Complex
Bagalur Road
Hosur

2 S.G. Sairam Petitioners in Crl.R.C. Nos.1370/2012

vs.

Arulanandam Respondents in both Crl.R.Cs.

Prayer in Both Criminal Revisions filed under Section 397 r/w 401 Cr.P.C. seeking to call for the records relating to the judgment and order dated 04.04.2012 passed in Crl.A. Nos.4 and 3 of 2011 respectively on the file of the Additional District & Sessions Court (Fast Track Court), Namakkal, confirming the judgment and order dated 20.12.2010 passed in S.T.C. No.379 of 2009 on the file of the Judicial Magistrate Court No.II, Namakkal and set aside the same.

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| For petitioner in Crl.R.C. No.526 of 2012 | Mr. E. Kannadasan |
| For petitioner in Crl.R.C. No.1370 of 2012 | Mr. E. Edwig |
| For respondent in both Crl.R.Cs. | Mr. M. Guruprasad |

COMMON ORDER

Since both these criminal revisions emanate from one judgment and order passed by the trial Court, they are considered and decided by this common order.

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

3 It is the case of the complainant that S.L. Enterprises (A1) is into finance business, in which, Sairam (A2), Murugan (A3) and Shankar (A4) are partners; the said firm borrowed a sum of Rs.10 lakhs from the complainant on 01.08.2004 on interest at the rate of 18% per annum and towards the discharge of the said debt, issued a post-dated cheque (Ex.P.1) bearing no.075665 dated 28.10.2004 drawn on Federal Bank Ltd., Hosur for a sum of Rs.10 lakhs ; at the request of the accused, the complainant did not present the cheque on 28.10.2004, but, presented the same on 20.04.2005 in Canara Bank, Namakkal Branch; the cheque was returned on 22.04.2005 with the endorsement "funds insufficient" vide return memo (Ex.P.2); the complainant issued a statutory demand notice dated 14.05.2005 (Ex.P.3) to the accused; S.L. Enterprises (A1) and Sairam (A2) evaded receipt of the notice and hence, notices sent to them were returned unserved and they were marked as Ex.P.4; Murugan (A3) and Shankar (A4) received the notice; Murugan (A3) issued a reply notice dated 06.06.2005 (Ex.P.6) and Shankar (A4) issued a reply notice dated 30.05.2005 (Ex.P.7); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C. No.379 of 2009 before the Judicial Magistrate No.II, Namakkal under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against A1 to A4.

4 The complainant examined himself as P.W.1 and his wife Rani as P.W.2 in order to rebut certain allegations that were made by Murugan (A.3) in his reply notice (Ex.P.6) and marked Exs.P.1 to P.7.

5 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same and did not give any plausible explanation as to the circumstances under which the cheque in question (Ex.P.1) came into the possession of the complainant. The accused examined one Ramgopal, Manager of Federal Bank Ltd. as D.W.1 and did not mark any document.

6 The trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 20.12.2010, acquitted Shankar (A4), but, convicted S.L. Enterprises (A1), Sairam (A2) and Murugan (A3) of the offence under Section 138 of the NI Act and sentenced them as follows:

| Accused | Sentence |
|---|---|
| S.L. Enterprises (A1) | Fine of Rs.10,000/- to be paid by Sairam (A2), in default, to undergo three months simple imprisonment |
| Sairam (A2) | 1 year simple imprisonment |
| Murugan (A3) | 1 year simple imprisonment |

7 Challenging the above conviction and sentence, while S.L.Enterprises (A1) and Sairam (A2) jointly preferred Crl.A. No.3 of 2011, Murugan (A3) preferred Crl.A. No.4 of 2011 before the Additional District Court, Namakkal, which were dismissed by judgment and order dated 04.04.2012, aggrieved by which, while S.L. Enterprises and Sairam (A2) have jointly preferred Crl.R.C. No.1370 of 2012, Murugan (A3) has preferred Crl.R.C. No.526 of 2012 invoking Section 397 r/w Section 401 Cr.P.C.

8 Heard Mr. E. Kannadasan, learned counsel for the accused in Crl.R.C. No.526 of 2012, Mr. E. Edwig, learned counsel for the accused in Crl.R.C. No.1370 of 2012 and Mr. M. Guruprasad, learned counsel for the complainant in both the revisions.

9 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.[1]]. Very recently, in Bir Singh vs. Mukesh Kumar[2], 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

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court having jurisdiction, in the absence of a jurisdictional error. .... ”
(emphasis supplied)

10 Coming to the case at hand, the complainant, who examined himself as P.W.1, has spoken about the loan of Rs.10 lakhs that was given by him to the accused, issuance of the impugned cheque signed by Sairam (A2) and Murugan (A3) as partners of S.L. Enterprises (A1), the presentation and dishonour of the cheque, issuance of the statutory demand notice dated 14.05.2005, return of the unserved notice that was sent to S.L. Enterprises (A1) and Sairam (A2), receipt of notice by Murugan (A3) and the reply notice given by Murugan (A3).

11 In the reply notice dated 06.06.2005 (Ex.P.6), Murugan (A3) has admitted that he was a partner with Sairam (A2) in S.L. Enterprises, but, has stated that Sairam (A2) retired from the partnership in October 2004 and gave an affidavit to him stating that some cheques of the firm have gone missing, but, has not referred to the impugned cheque in the affidavit. It is further stated in the said reply notice that Sairam (A2) and the complainant's wife Rani have had financial dealings, for which, Sairam (A2) had issued the impugned cheque in connivance with Rani.

12 The learned defence counsel contended that Rani, wife of the complainant, had complained to the police that Sairam (A2), Murugan (A3) and Shankar (A4) had taken a sum of Rs.20.50 lakhs from her in bits and pieces and had cheated her, for which, a case in Cr. No.1 of 2007 was registered and all the three were prosecuted in C.C. No.126 of 2016 under Section 420 IPC before the Judicial Magistrate, Krishnagiri and were acquitted on 10.03.2017. Therefore, it was submitted that the present prosecution by the complainant for the dishonour of the cheque in question cannot be sustained.



13 However, as pointed out above, the complainant examined his wife Rani as P.W.2 on 06.10.2009 itself and she, in her evidence, has stated that, apart from the present transaction, the accused have had transactions with her as well and had tried to cheat her of Rs.20 lakhs, for which, she has independently lodged a complaint against them to the police. She was subjected to grilling cross-examination by each of the accused and they were unable to make any serious dent in her testimony.

She has clearly stated that the two transactions were different. Both the Courts have appreciated the evidence on record in the proper perspective and this Court does not find any perversity or impropriety in the same. It is true that the cheating case that was investigated by the police ended in acquittal in the year 2017. However, in this case, the accused were convicted as early as 20.12.2010 by the trial Court. Had Rani (P.W.2) suppressed the police case in her evidence, then, one can legitimately smell a rat in the present case. When both the complainant (P.W.1) and Rani (P.W.2) have come abreast of all facts without suppression, their testimony cannot be discarded lightly. The fact remains that Sairam (A2) and Murugan (A3) have signed the impugned cheque as partners of S.L. Enterprises (A1). Though they can discharge the burden under Section 139 of the NI Act by preponderance of probability as held by the Supreme Court in Rangappa vs. Sri Mohan[3], even the same has not been done in this case and instead, they have blamed and accused each other, thereby becoming a divided house.

14 In view of the above discussion, this Court finds no infirmity in the conviction of the accused of the offence under Section 138 of the NI Act by the two Courts below and accordingly, their conviction is confirmed.

15 However, to subserve the interests of justice, the substantive sentence of one year simple imprisonment slapped on Sairam (A2) and Murugan (A3) is reduced to six months simple imprisonment.

In the result, these criminal revisions are dismissed. The trial Court is directed to secure the presence of Sairam (A2) and Murugan (A3) and commit them to prison for serving out the period of sentence. Liberty is given to the parties to approach the trial Court for compounding the offence under Section 147 of the NI Act, even after the accused are taken into custody and in the event of the matter being compounded under Section 147, ibid., the Magistrate shall send a report to the Assistant Registrar (Crl. Side) of this Court, who shall make it form part of the records in Crl.R.C. Nos.526 and 1370 of 2012. 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.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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cad

To

1 The Additional District & Sessions Judge (Fast Track Judge) Namakkal

2 The Judicial Magistrate No.II, Namakkal

3 The Deputy Registrar (Crl. Side) with a direction
High Court of Madras to transmit the originalrecords
Chennai 600 104 to the respective Courts, forthwith

4.The Assistant Registrar,
Criminal side,
High Court,Madras

5.The Section Officer,
Criminal Section,
High Court,Madras

+2ccs to Mr.M.Guruprasad , Advocate SR.No. 99640,99641
+1cc to Mr.E.Kannadasan , Advocate SR.No. 10059

Crl.R.C. Nos.526 & 1370 of 2012

A.SK(05/02/2020)