

Bail Slip

The Petitioner/Accused namely M/s.Opal Industries, rep. By its Proprietor, Bhuvaneshwaran, M/33 years, No.9, Police Quarters Main Road, Bharathi Nagar, Coimbatore is directed to be released on bail as per order of this Court dated 20.06.2012 made in M.P.No.1 of 2012 in CrI.RC.No.607 of 2012 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.607 of 2012

M/s.Opal Industries,
Rep.by its Proprietor,
Bhuvaneshwaran,
No.9, Police Quarters Main Road,
Bharathi Nagar, Coimbatore. ... Petitioner/Accused

/versus/

M/s.S.B.Engineering,
Rep.by its Proprietor,
Mr.T.K.Velusamy,
S/o.Karuppusamy,
No.182, Bharathiyar Road,
Thiruvengada Nagar, Ganapathy,
Coimbatore-641 006. ... Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment passed by the I Additional District and Sessions Judge, Coimbatore, confirming the judgment of the Judicial Magistrate No.II, Coimbatore passed in C.C.No.530 of 2009 dated 13.09.2011, convicting and sentencing the petitioner to undergo 1 year Simple Imprisonment and to pay a fine of Rs.5,000/- in default 3 months Simple Imprisonment by its judgment dated 30.03.2012 in C.A.No.211 of 2011 for the alleged offence under Section 138 of Negotiable Instrument and Act.

For Petitioner : Mr.M.Vijayakumaran

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

O R D E R

Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

2. The matter arising out of complaint under Section 138 of Negotiable Instrument Act. The accused is the petitioner herein who has suffered the concurrent finding of the Court below holding that the cheques issued by him to the complainant/respondent is given to discharge an enforceable debt and having failed to honour it, he is liable to be punished. Accordingly, the trial Court has imposed one year S.I and fine of Rs.5,000/-, in default three months S.I, which was confirmed by the Lower Appellate Court.

3. The short point raised by the revision petitioner is that the Courts below have failed to consider the evidence properly and by mis-application of law had held the accused guilty on the ground that he has not rebutted the presumption under Section 139 Negotiable and Instrument Act. Wherein, the Courts below has failed to consider that there was business transaction between him and the respondent, long time ago and the cheques issued as security has been misused. The debt alleged to have been incurred for purchase of machineries covered under invoices marked as Ex.P.1 series, not been proved by the complainant by supportive documents, such as delivery challan and delivery acknowledgement. While so, the Courts below taking extraneous consideration, rejected the plea taken by the accused, despite rebutting the presumption and failure of the complainant to prove enforceable debt through accounts and records. However, the learned counsel appearing for the respondent/complainant would submit that the mere denial of enforceable debt is not sufficient to rebut the presumption as laid down by Hon'ble Supreme Court in Rangappa Vs.Sri Mohan Case. Both the Courts below on facts and law has held in favour of the complainant. When there is no illegality or perversity in the finding of the Courts below, the scope of revisional jurisdiction is very limited and cannot be interfered.

4. The learned counsel for the petitioner would also submit that the factum of receipt of goods implicitly admitted by the accused, by taking a plea that the goods delivered was defective and he sought for rectification of the defect. Since, the complainant failed to rectify the defect, he threatened the complainant that he will launch prosecution against him. To counter blast the same, a blank cheques which was given as a security, earlier has been misused. While admitting the delivery of goods implicitly, the accused cannot take a plea that the goods was not delivered. Goods covered under invoice Ex.P.1 series was not delivered.

5. To buttress his submission, the learned counsel for the respondent would also rely upon the observation of the Lower Appellate Court in its judgment paragraph 5 wherein, the dilated tactics and the strategy adopted by the accused being exposed and recorded.

6. Heard the rival submissions made by the counsels and perused the records.

7. It is a specific case of the complainant that the subject cheque for Rs.95,200/- dated 26.11.2008 and Rs.1,58,500/- dated 26.12.2008 were issued by the accused, to discharge his debt incurred during purchase of machineries from the complainant company on credit basis on various dates, the invoices are marked as Ex.P.1 series. The first invoice dated 17.09.2008 for Rs.15,600/-; the second invoice dated 06.10.2008 for Rs.2,08,000/-. Besides that, the complainant has claimed additional sum of Rs.30,100/- under the head that previous bill balances and bending charges. So, according to the complainant two cheques totally for a sum of Rs.2,53,700/- was issued to discharge the above debts. It is an admitted case of the complainant that the business transaction between him and the accused was stopped, two years prior to issuance of cheque. Being so, when the accused has taken a plea that the cheque was issued only as security, for the earlier transaction and there was no purchase from the complainant company under the invoice marked as Ex.P.1 series, the complainant ought to have produced some documents to substantiate that the goods mentioned in Ex.P.1 invoice was really sold and delivered to the accused. In the absence of delivery note or delivery challan or acknowledgement from the accused to confirm the receipt of the goods covered under the invoice, coupled with the fact that the transaction between the accused and the complainant ceased two years back, probabalises the case of the defence.

8. Having shifted the burden of presumption under Section 139 Negotiable Instrument Act, the complainant who claims that the accused used to purchase goods under credit basis and clear the debts periodically and also claimed a sum of Rs.30,100/-, as a balance towards the previous bill has to prove the same. The failure of the complainant to produce the statement of accounts and documents to substantiate his allegation of enforceable debt, ought to have been considered by the Courts below. Unfortunately, the trial Court as well as the Appellate Court has not taken note of this particular fact, which renders the complainant case unsustainable.

9. The Courts below have not properly appreciated the defence of the accused, which has probabalized a case of no liability by preponderance of probability. The burden of

proving the liability shifted to the complainant. Being a company, it should have maintained accounts for goods sold and delivered and money received. Since, the complainant has failed to place documents to substantiate his claim of enforceable debt, the presumption under Section 139 of Negotiable Instrument Act is also been rebutted by the accused, the complaint deserved to be dismissed. Since the Courts below has not considered the law and facts properly, the judgments of the Courts below are set-aside.

10. In the result, the Criminal Revision Case is Allowed. The judgment passed by the Courts below are set-aside. Fine amount paid if any, shall be refunded to the accused.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.II,
Coimbatore.
3. The Section Officer,
Criminal Section, High Court, Madras.

Criminal Revision Case No.607 of 2012

NMI (CO)

RRS (27/05/2019)

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