Bail Slip

The Petitioner/Accused namely A.V.Ponmudi aged 29, S/o. Viswanathan was released on bail in M.P. 1/2012 in Crl.R.C.No.913 of 2012 order dated 10.08.2012.

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.913 of 2012

A.V.Ponmudi .. Petitioner/ Accused

Vs

M.Ravichandran ..Respondent/ Complainant

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment and order dated 13.02.2012 passed by the Sessions Judge, Nagapattinam in C.A.No.79 of 2010 confirming the judgment and order dated 22.07.2010 passed by the Judicial Magistrate No.I, Nagapattinam in S.T.C.No.194 of 2008.

For Petitioner : Mrs.Greetha Senthilkumar

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 13.02.2012 passed by the Sessions Judge, Nagapattinam in C.A.No.79 of 2010 confirming the judgment and order dated 22.07.2010 passed by the Judicial Magistrate No.I, Nagapattinam in S.T.C.No.194 of 2008.

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

3.It is the case of the complainant that, he is the Proprietor of Sri Durga Agencies and is in the business of selling prawn feeds; the accused, who has a prawn farm, has purchased prawn feeds from the complainant to a tune of Rs.1,97,000/-, towards which, he gave a cheque dated 22.01.2008

(Ex.P1) for Rs.1,97,000/- drawn on Bank of Baroda; the complainant deposited the cheque on 31.01.2008 and the same was returned unpaid on 06.02.2008 with the endorsement "payment stopped" (Ex.P2), which was intimated to the complainant by the bank advice dated 08.02.2008 (Ex.P3); the complainant issued a statutory demand notice dated 06.03.2008 (Ex.P6), which was received by the accused on 11.03.2008 vide acknowledgment card (Ex.P7); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.194 of 2008 before the Judicial Magistrate No.I, Nagapattinam against the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

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

5.To prove the case, the complainant examined himself as P.W.1 and marked Exs.P1 to P7. The accused examined himself as D.W.1 and also examined four other witnesses viz. D.W.2 to D.W.5 and Exs.D1 to D3.

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

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.07.2010 in S.T.C.No.194 of 2008, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for three months and pay fine of Rs.3,000/-, in default to undergo simple imprisonment for three months and further directed to pay Rs.1,97,000/- to the complainant as compensation. The Sessions Judge, Nagapattinam vide judgment and order dated 13.02.2012 in C.A.No.79 of 2010 that was filed by the accused, while confirming the conviction and sentence, set aside the fine element alone. Challenging the concurrent findings of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8.Heard Mrs.Greetha Senthilkumar, learned counsel for the accused. Though notice was served on the complainant, he has not entered appearance.

9.The complainant (P.W.1), in his evidence, has stated about the sale of prawn feeds to the accused, issuance of the impugned cheque of Rs.1,95,000/- by the accused, its presentation, dishonour on the ground "payment stopped", issuance of statutory demand notice, failure of the accused to comply with the demand

and the filing of the complaint. In the cross-examination of the complainant (P.W.1), the accused has not denied his signature in the cheque and has suggested that during the course of the business, the complainant has taken the cheque as security and has misused the same, which suggestion, the complainant (P.W.1) denied.

10.The accused, who examined himself as D.W.1, has stated in the chief-examination as under :

> "I may have purchased prawn feeds for Rs.1,00,000; I may have paid Rs.50,000/- towards that; I may have taken the balance as loan." (emphasis supplied)

He has used the expression 'I may' and he has not stated 'I had'. Of course, he has admitted that he had purchased prawn feeds from the complainant. He has further stated in the chief-examination that the complainant asked him to pay Rs.50,000/- by a demand draft in favour of M/s.Waterbase and that, he had taken a demand draft and given it to the said company. The accused (D.W.1) has further stated that he received the statutory demand notice. The accused (D.W.1) has marked Exs.D1 to D3, the application and other documents to show that he had taken a demand draft for Rs.50,000/- in the name of M/s.Waterbase. The accused (D.W.1), has further stated that, after he received the statutory demand notice, he contacted the complainant and the complainant told him that his counsel has inadvertently sent the notice and further assured that no precipitate action will be taken and therefore, he did not reply.

11.The accused (D.W.1) examined the income tax officials as P.W.2 and P.W.3 and in their evidence, they have stated that the complainant has shown the debt of Rs.1,97,000/- in his income tax returns. The accused (D.W.1) examined Anbazhagan (D.W.4) from the sales tax department, who has stated that the complainant has not filed his returns. The accused (D.W.1) examined Arul, Branch Manager of Bank of Baroda, to prove that he had taken a demand draft for Rs.50,000/- on 02.08.2007 in the name of M/s.Waterbase. What the complainant failed to prove, the accused proved by examining the income tax officials as defence witnesses and they have stated that the complainant had shown about the debt in his return. In this case, the accused had stopped payment, but has not proved that as on the date, when the cheque came up for clearance, he had the necessary funds. The explanation offered by the accused that the complainant told him that his counsel had inadvertently sent the statutory notice, defies credulity. Both the Courts have appreciated the evidence on record in the right perspective.

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 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 his 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. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

gya

To
1.The Sessions Judge
Nagapattinam.

2.The Judicial Magistrate Court No.I,
Nagapattinam.

3.The Judicial Magistrate
Sirkali

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

CRL.R.C.No.913 of 2012

VGII(CO)
SP(04/02/2020)