



Bail Slip

The Appellant/Accused, namely R.Murugesan S/o Ramasamy was directed to be released on bail as per order of this Court dated 21/08/2012 made in CrI MP No.172/2012 in CrI.R.C.No.998 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2019

DELIVERED ON: 27.11.2019

CORAM:

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

CrI.R.C.No.998 of 2012

R.Murugesan ... Petitioner /Accused

Vs.

M/s.Pidilite Industries Ltd.,
306, Loyds Road
Gopalapuram
Chennai - 600 086
Rep. By its Authorised Nominee
R.Govindan

... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C against the order dated 20.07.2012 passed by the II Additional Sessions Court, Chennai in Criminal Appeal No.97 of 2011 confirming the order passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai dated 19.04.2011 in C.C.No.2145 of 2006.

For Petitioner : Mr.G.Moorthi

For Respondent : Mr.K.Rangesh
for M/s.Jayaraman Associates

JUDGMENT

This Criminal Revision has been preferred challenging the judgment and order dated 20.07.2012 passed by the II Additional Sessions Court, Chennai in Criminal Appeal No.97 of 2011 confirming the order dated 19.04.2011 passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2145 of 2006.



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

3. It is the case of the complainant that they are engaged in the manufacture of Fevicol adhesives, synthetic resins, pigments, leather chemicals etc., The accused, who was the Proprietor of M/s.Vijayakumar Chemicals, had purchased leather chemicals from the complainant regularly on credit basis and a sum of Rs.87,771.11 was due and payable by the accused to the complainant as on 29.04.2005. Towards the said liability, the accused issued three cheques, for Rs.20,000/- dated 12.01.2006 (Ex.P3), Rs.25,000/- dated 16.01.2006 (Ex.P4) and Rs.30,000/- dated 20.01.2006 (Ex.P5). When the complainant presented the three cheques on the respective date mentioned thereon, they were returned unpaid with the endorsement "Insufficient Funds". On receipt of the communication from the bank, the complainant issued a legal notice dated 08.02.2006 (Ex.P10), which was received by the accused vide acknowledgment card Ex.P11. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.2145 of 2006 before the XVIII Metropolitan Magistrate, Saidapet, Chennai under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

4. The complainant examined three witnesses and marked Exs.P1 to P19. The accused examined himself as DW1 and marked Ex.D1. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same.

5. After considering the evidence on record and after hearing either side, the trial Court, by judgment and order dated 19.04.2011, in S.T.C.No.2145 of 2006, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for three months and to pay a compensation of Rs.1,75,542/- to the complainant, in default to undergo three months simple imprisonment. The appeal in C.A.No.97 of 2011 that was filed by the accused was dismissed by the II Additional Sessions Court, Chennai on 20.07.2012. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision under Section 397 r/w.401 Cr.P.C.

6. Heard the learned counsel for the petitioner/accused and learned counsel for the respondent/complainant.



7. This Court gave its anxious consideration to the rival submissions.

8. 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 Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], 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)

9. The complainant, through PW1, has spoken about the supply of leather chemicals to the accused, the Statement of Account showing that a sum of Rs.75,000/- was due, the issuance of the cheques, the dishonour, the issue of legal notice and receipt of the same by the accused. In the cross-examination of the witnesses, the accused has taken the defence that the witness does not have the competency to depose. Both Courts have considered this defence and held that the complainant is a juristic person and an officer of such a juristic person can give evidence. The accused in his evidence has stated that he is into the business relating to wood products and therefore, he has no necessity to purchase chemicals relating to the leather products.

10. The learned counsel for the revision petitioner placed reliance on Ex.D1 to show that the accused was doing business in wood products. In the cross-examination of the accused (DW1), he has admitted that he received the statutory demand notice sent by the complainant and in that notice, it is stated that he had purchased leather chemicals for which he did not send any reply refuting the same.

11. The fact remains that the accused does not deny the signature and issuance of the three cheques, but has been contesting the case on technical grounds by raising the locus standi of the witness to depose on behalf of the complainant company. Though the accused can discharge the burden by preponderance of probability, as held by the Hon'ble Supreme Court in Rangappa Vs. Sri Mohan reported in (2010) 11 SCC 4413,



even this has not been done in this case by the accused. More recently, the Hon'ble Supreme Court in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019) has held as follows :

"20.The Trial Court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

12. This Court does not find any infirmity or illegality in the judgment order passed by the two Court below.

In the result, this criminal revision is dismissed. 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 under Section 147 of the NI Act for compounding the offences even after he is taken into custody. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1. II Additional Sessions Judge,
Chennai.



2. XVIII Metropolitan Magistrate
Saidapet, Chennai.

3. The Chief Metropolitan Magistrate,
Egmore, Chennai.

4. The Deputy Criminal Section, High Court, Madras. } Registrar, with a direction to send the original records to the two Courts below forthwith.

+1cc to Mr.G.Moorthi, Advocate Sr.99776
+1cc to M/s.Jayaraman Associates, Sr.99252

Crl.R.C.No.998 of 2012

ev[co]
srg 07/01/2020