

Bail Slip

The Petitioner/Accused viz Nallamuthu aged 53 years was released on bail as per order of this court dated 09/10/2013 in M.P.No.1/2013 in Crl.RC.No.1250/2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2019

DELIVERED ON: 13.11.2019

CORAM:

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

Crl.R.C.No.1250 of 2013

Nallamuthu

Proprietor

M/s.M.G.Textiles

1/165, Balaji Nagar

TKT Mill, Veerapandi Post

Tirupur

... Petitioner /Accused

Vs.

M/s.Sri Siddhi Vinayagar Tex India Private Ltd.,

Rep. By its Accountant Mr.K.Mani

443/4, Kamarajar Road

Tirupur

... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C against the judgment of the learned Sessions Judge, Tirupur in Crl.A.No.3 of 2012 dated 16.07.2013 confirming the conviction and sentence imposed by the Judicial Magistrate No.1, Tirupur dated 18.12.2012 in S.T.C.No.3397 of 2008.

For Petitioner : Mr.K.S.Kavi Arasu

for Mr.K.Vignesh Karthick

For Respondent : Mr.S.Sairam

for Mr.Goviganesan

JUDGMENT

This Criminal Revision has been preferred challenging the judgment and order dated 16.07.2013 passed by the Sessions Judge, Tirupur in Crl.A.No.3 of 2012 confirming the judgment of Judicial Magistrate I, Tirupur in S.T.C.No.3397 of 2008 dated 18.12.2012.

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

3. The complainant in this case is a private limited company registered under the Companies Act, 1956. It is the case of the complainant that they are engaged in the manufacture of hosiery yarn and the accused purchased hosiery yarn on 05.11.2007 vide invoice No.VAT/87/2007 (Ex.P3) to the tune of Rs.6,60,000/- and took delivery of which on 06.11.2009 vide Ex.P4. Towards this liability, the accused issued a cheque for Rs.6,60,000/- dated 26.12.2007 drawn on Allahabad Bank, Tirupur (Ex.P5). The complainant presented the cheque for collection and the same returned unpaid with the endorsement "Insufficient Funds" on 19.06.2008 vide return memo (Ex.P6). The complainant issued a statutory demand notice (Ex.P7), which was received by the accused vide postal acknowledgment card (Ex.P8). Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.3397 of 2008 before the Judicial Magistrate I, Tirupur under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

4. On behalf of the complainant, their Accounts Officer K.Mani was examined as PW1 and Exs.P1 to P11 were marked. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he merely denied the same, but did not offer any explanation as to how the cheque issued by him came into the hands of the complainant. No witness was examined on the side of the accused nor any document marked.

5. After considering the evidence on record and after hearing either side, the trial Court by judgment and order dated 18.12.2012 in S.T.C.No.3397 of 2008 convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and fine of Rs.5000/-, in default to undergo one month simple imprisonment. The cheque amount of Rs.6,60,000/- was directed to be paid as compensation to the complainant. The appeal in C.A.No.3 of 2012 that was filed by the accused was dismissed by the Principal Sessions Court, Tirupur on 16.07.2013. 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 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 Kuldip 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. In order to prove the case, the complainant examined their Accounts Officer K.Mani, who in his evidence has marked the Company's Authorisation (Ex.P1), Purchase Order given by the accused (Ex.P2), Invoice (Ex.P3), Delivery Note signed by the accused for having taken delivery of the Yarn (Ex.P4), the impugned cheque dated 26.12.2007 for Rs.6,60,000/- issued by the accused (Ex.P5), the return memo showing that the cheque was returned with the endorsement "Insufficient Funds" (Ex.P6), the statutory demand notice (Ex.P7), the postal acknowledgment card (Ex.P8), the returned cover containing the demand notice that was sent to the office address of the accused (Ex.P9) and the account statement relating to the supplies made to the accused (Exs.P10 and P11). In the cross-examination of PW1, the accused has not denied the issuance of the cheque, but has mainly concentrated on attacking the competency of the accountant to give evidence on behalf of the private limited company. It was further suggested to the witness that the complainant had taken a blank cheque as security and has misused the same, which suggestion the witness has denied. In fact the witness has stated that the accused himself handed over the filled-in cheque. Thus, the defence of the accused is that the cheque was given as security and not towards any legally enforceable debt.

10. When the accused was examined under section 313 Cr.P.C, he did not give any explanation as to the circumstances under which the impugned cheque was given to the complainant.

Merely making suggestions in the cross-examination of PW1 will not lead to the inference that the accused has discharged the burden under Sections 118 and 139 of the Negotiable Instruments Act. 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.

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

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Sessions Judge
Tirupur

4/5

2. Judicial Magistrate No.1
Tirupur

3. The Chief Judicial Magistrate,
Tirupur.

4.The Deputy Registrar,
Criminal Section,
HighCourt, Madras.

} with a direction to send
the original records to the
two Courts below forthwith.

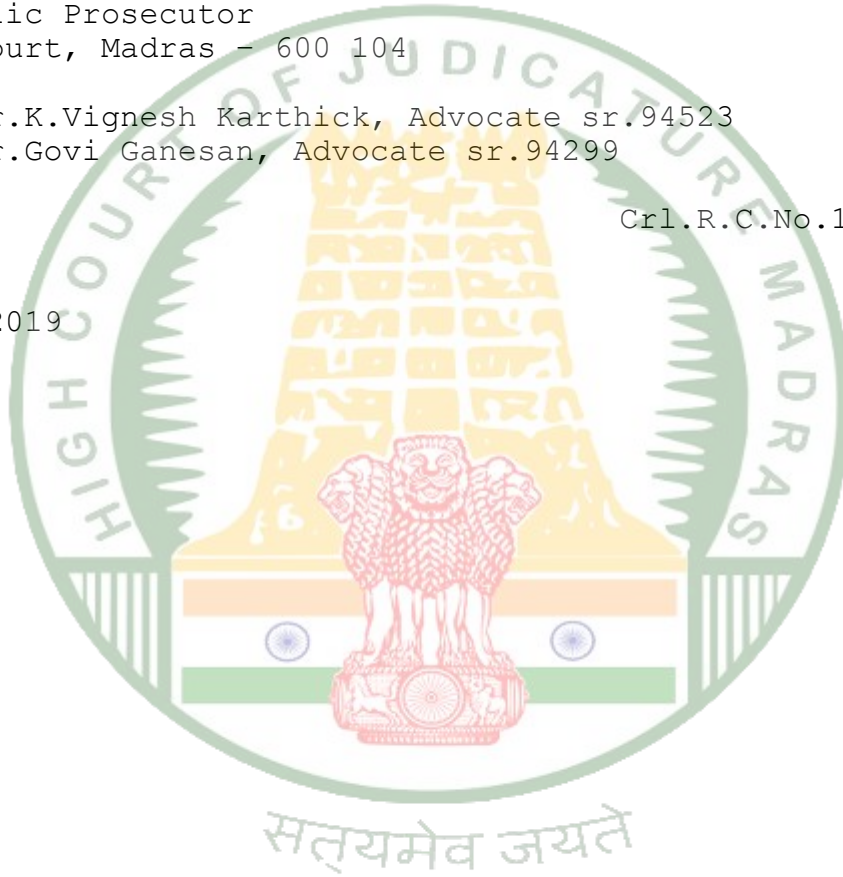
5.The Public Prosecutor
High Court, Madras - 600 104

+1cc to Mr.K.Vignesh Karthick, Advocate sr.94523

+1cc to Mr.Govi Ganesan, Advocate sr.94299

Crl.R.C.No.1250 of 2013

ad(co)
nr 12/12/2019



WEB COPY