

BAIL SLIP

The Petitioner / Accused, namely Raghu @ Raghupathy S/o. Krishnan, aged about 45 years (in CC.NO.241/2011 dated 16.10.2012 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore was released on bail as per the order of this Court dated 30.04.2013 made in CMP.NO.1/13 IN CRL RC.NO.626/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2019

PRONOUNCED ON : 12.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.626 of 2013

Raghu @ Raghupathy ... Petitioner/Accused
Vs
S.R.Dhanajeyan ... Respondent/Complainant

Criminal Revision preferred under Sections 397 and 401 Cr.P.C. to set aside the judgment and order dated 28.02.2013 passed by the III Additional District and Sessions Judge, Coimbatore in C.A.No.302 of 2012 confirming the judgment and order dated 16.10.2012 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in C.C.No.241 of 2011.

For Petitioner : Mr.P.Anand
Mr.A.Sermaraj
For Respondent : Mr.L.Mouli

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 28.02.2013 passed by the III Additional District and Sessions Judge, Coimbatore in C.A.No.302 of 2012 confirming the judgment and order dated 16.10.2012 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in C.C.No.241 of 2011.

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, the accused entered into a sale agreement (Ex.P1) on 30.03.2007 with the complainant's wife agreeing to sell the property belonging to him for Rs.25,00,000/-; the complainant's wife paid the entire sale consideration, for which, the accused issued a varthamana letter (Ex.P2); the accused also executed a Power of Attorney in favour of the complainant's wife, which was registered as document No.475 of 2007 (Ex.P3); the accused went back on his word and sold the property to a third party; when the

complainant demanded repayment of the money, the accused gave Rs.2,50,000/- by cheque and promised to give the balance of Rs.22,50,000/-; on further persuasion by the complainant, the accused issued four cheques viz. Rs.2,50,000/- dated 05.04.2008 (Ex.P4), Rs.5,00,000/- dated 05.04.2008 (Ex.P5), Rs.5,00,000/- dated 07.05.2008 (Ex.P6) and Rs.2,50,000/- dated 05.05.2008 (Ex.P7) in favour of the complainant; the complainant presented all the four cheques and they were returned unpaid on 22.05.2008 vide return memos (Ex.P8 series) and debit advice (Ex.P9); the complainant issued a statutory demand notice dated 30.05.2008 (Ex.P10), which was received by the accused on 04.06.2008 vide acknowledgment card (Ex.P11), for which, the accused issued a reply notice dated 19.06.2008 (Ex.P12); since the accused did not comply with the demand, the complainant initiated a prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused in S.T.C.No.539 of 2008 before the Judicial Magistrate No.VII, Coimbatore, which was transferred to the Court of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore and was renumbered as C.C.No.241 of 2011.

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

5.The complainant examined himself as P.W.1 and marked Exs.P1 to P12. 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 cheques issued by him came into the possession of the complainant. No witness was examined on the side of the accused nor any document marked.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 16.10.2012 in C.C.No.241 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year rigorous imprisonment and pay fine of Rs.5,000/- in default, to undergo three months simple imprisonment. The appeal in C.A.No.302 of 2012 that was filed by the accused was dismissed by the III Additional District and Sessions Court, Coimbatore on 28.02.2013. Challenging the concurrent findings of fact of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

7.Heard Mr.P.Anand, learned counsel for the petitioner/accused and Mr.L.Mouli, learned counsel for the respondent/complainant.

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 (P.W.1), in his evidence, has spoken to about the sale agreement (Ex.P1) dated 30.03.2007 between his wife and the accused, the varthamana letter (Ex.P2) that was issued by the accused for the receipt of Rs.25,00,000/-, the registration of the Power of Attorney (Ex.P3), the sale of the property to another person by the accused, issuance of the four cheques (Exs.P4 to P7), their dishonour (Ex.P8 series), issuance of legal notice (Ex.P10), receipt of reply notice (Ex.P12) and the filing of the complaint.

10.In the cross-examination, the accused has not denied his signature in the impugned cheques. In the reply notice (Ex.P12) and in the cross-examination of the complainant, the accused took diametrically conflicting stands, viz. in the reply notice, he has stated that he has not met or approached the complainant at all and that, he does not even know who S.D.Nalini (wife of the complainant) is, but, in the cross-examination, the accused has stated that the complainant and he were doing scrap business and in that scrap business, the complainant had taken blank cheques and had misused them for filing the present prosecution.

11.Mr.P.Anand, learned counsel for the accused submitted that the sale agreement (Ex.P1) and the varthamana letter (Ex.P2) are photocopies and they cannot be relied upon. It is necessary to state here that there was no objection raised, at the time when these exhibits were marked. Even if we keep aside these exhibits, the accused has not denied that he has executed a Power of Attorney in favour of S.D.Nalini, wife of the complainant, a copy of which has been marked as Ex.P3.

12.Learned counsel for the accused further submitted that in the Power of Attorney (Ex.P3), it is stated that no consideration had passed and therefore, there was no debt. In the opinion of this Court, the Power of Attorney (Ex.P3) cannot be seen in isolation. The Power of Attorney (Ex.P3) has

to be seen in the light of the evidence of the complainant that the accused had received Rs.25,00,000/- from his wife for selling his property to her and when the sale did not go through, he returned the amounts by the impugned cheques. Normally, while executing a Power of Attorney, a standard averment to the effect that the Power of Attorney is not supported by any consideration will be made. This averment, by itself, is not sufficient to disbelieve the case of the complainant that the four cheques were issued by the accused towards refund of the sum of Rs.25,00,000/- that was received by him for selling his property. Very recently, in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019), the Supreme Court 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.

21. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act
"

Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, in this case, the accused has stated in one breath, that he does not know the complainant and in another, he has stated that he had given the cheques, during the course of transaction to the complainant. In such view of the matter, this Court does not find any infirmity in the findings of the two Courts below warranting interference.

In the result, this Criminal Revision is dismissed. The trial Court is directed to secure the accused and commit him to 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. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate Court,
(FTC at Magisterial Level-II),
Coimbatore.

3.The Deputy Registrar,
Criminal Side,
High Court, Madras.

Copy to:
The Section Officer,
ER Section, High Court, Chennai.

+1cc to Mr.A.sermaraj , Advocate SR.No. 93651
+1cc to Mr.L.Mouli , Advocate SR.No. 93578

CRL.R.C.No.626 of 2013

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A.SK(18/12/2019)

A.SK(22/01/2020)

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