

BAIL SLILP

The Appellant/Accused viz., V.S.Gunaseelan, S/o.V.S.Subramanian, was directed to be released on bail as per order dated 30/04/2013 in MP.No. 1/2013 in CrI.Rc.627/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM:

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

CrI.R.C.No.627 of 2013

V.s.Gunaseelan ... Petitioner /Accused

Vs.

V.Selvaraj ... Respondent/Complainant

Criminal Revision filed under Section 397 read with 401 Cr.P.C to set aside the judgment dated 28.03.2013 passed by the Principal District and Sessions Judge, Coimbatore in C.A.No.235 of 2012 confirming the judgment and conviction imposed on the petitioner by judgment dated 17.07.2012 passed by the Judicial Magistrate II, Coimbatore in C.C.No.1036 of 2010.

For Appellant : Mr.W.Camyles Gandhi

JUDGMENT

This Criminal Revision has been preferred challenging the judgment dated 28.03.2013 passed by the Principal District and Sessions Judge, Coimbatore in C.A.No.235 of 2012 confirming the conviction and sentence imposed on the petitioner by the Judicial Magistrate II, Coimbatore by judgment dated 17.07.2012 in C.C.No.1036 of 2010.

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

3. It is the case of the complainant that he was running a petrol bunk in partnership with the accused and during the course of business, the accused wanted a loan of Rs.4,00,000/-, which the complainant gave on 05.07.2008 and obtained a demand promissory note (Ex.P1). Towards this liability, the accused gave a cheque dated 30.07.2010 (Ex.P2) for Rs.4,00,000/- ,

which when presented by the complainant was dishonoured vide bank memo dated 02.08.2010 (Ex.P3). The complainant issued a statutory demand notice dated 26.08.2010 (Ex.P5), which was not received by the accused. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.1036 of 2010 under Section 138 of the Negotiable Instruments Act, 1881 before the Judicial Magistrate II, Coimbatore.

4. The complainant examined himself as PW1 and marked Exs.P1 to P6. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the accused nor any document marked.

5. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 17.07.2012 in C.C.No.1036 of 2010, convicted the accused and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5000/-, in default to undergo 3 months simple imprisonment. The appeal in C.A.No.235 of 2012 that was filed by the accused was dismissed by the Principal District and Sessions Judge, Coimbatore on 28.03.2013. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision petition.

6. During the pendency of the revision petition, the complainant died on 26.10.2013 and his legal heirs did not come forward to get themselves impleaded. The learned counsel for the accused submitted that both the Courts have failed to appreciate the evidence in proper perspective. He also submitted that the accused has deposited Rs.1,00,000/- at the time of suspension of sentence in appeal and gave Rs.66,000/- by cash to Latha Mani, the widow of the complainant and that he is ready and willing to pay the balance of Rs.2,20,000/- before the trial Court.

7. In view of the above representation, this Court passed the following order on 21.10.2019:

"2. The petitioner is directed to deposit the sum of Rs.2,20,000/- before the trial Court on or before 30.10.2019 and report to this Court on 31.10.2019. The petitioner shall be present before this Court on 31.10.2019.

Post the matter on 31.10.2019, under the caption "for orders"."

8. Accordingly, today the accused is present and has filed a memo showing that he has deposited Rs.2,20,000/- before the trial

Court on 25.10.2019 and submitted a photocopy of the receipt.

9. Coming to the facts of the case, it is seen that the complainant has proved the debt beyond reasonable doubt by marking the promissory note as Ex.P1. The accused has not denied his signature in the promissory note (Ex.P1) and in the impugned cheque (Ex.P2). The accused has failed to discharge the burden under Section 139 of the Negotiable Instruments Act even by preponderance of probability.

10. It is trite that while exercising powers under Section 397 read with 401 Cr.P.C, this Court cannot act as a second Appellate Court as held by the Hon'ble Supreme Court in Bir Singh Vs. Mukesh Kumar reported in (2019) 4 SCC 197.

11. However, in view of the subsequent developments as stated above, this Court is of the considered view that interest of justice will be served if the sentence of imprisonment is set aside and in lieu of which, the accused is directed to deposit a sum of Rs.25,000/- as compensation.

In the result, this criminal revision is partly allowed, conviction of the accused under Section 138 of the Negotiable Instruments Act is confirmed and the sentence of imprisonment is set aside. The sentence of fine of Rs.5,000/- is confirmed. The accused shall deposit a sum of Rs.25,000/- before the trial Court within two weeks from the date of receipt of a copy of this order as compensation, failing which he shall undergo sentence of one month simple imprisonment. The widow of the complainant, namely Latha Mani will be entitled to withdraw the sums of Rs.1,00,000/-, Rs.2,20,000/- and Rs.25,000/- from the trial Court. The trial Court is directed to send notice to Latha Mani to collect the amount. If Latha Mani needs legal assistance, the trial Court shall provide free legal assistance via the Legal Services Authority.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-III)

//True Copy//

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Sub Assistant Registrar

gpa

To

1. The Principal District and Sessions Judge
Coimbatore

2. The Judicial Magistrate II
Coimbatore.

3. Do Through The Chief Judicial Magistrate,
Coimbatore.

4. Mrs.Latha Mani
W/o.Selvaraj
26-1/6A Rukmanikrupa
II Cross, Bharathi Nagar
Ganapathy, Coimbatore - 641 006

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

+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No. 90441

Cr1.R.C.No.627 of 2013

KK(CO)
GN(05/12/2019)



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