



Bail Slip

The Petitioner accused viz., Duraipandiyan was directed to be released on bail as per order of this Court dt.05/02/2016 in CrI.MP.No.1013 of 2010 in CrI.RC.No.158 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

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

CrI.Rc.No.158 of 2016

Duraipandiyan

...Petitioner

vs.

M/s.Dharanidara Spinning Mills Ltd.,
Rep. by its Authorized Person Prabhu Daniel,
S/o.Puspanadhan,
Sriranga Tower 104,
Peramanoor Main Road,
Salem-7.

...Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC against the judgment of the learned III Additional District and Sessions Judge, Salem in C.A.No.146 of 2014 dated 27.11.2015, confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Salem in S.T.C.No.47 of 2007 dated 14.10.2014.

For Petitioner : M/s.J.Franklin

For Respondent : M/s.V.S.Kesavan
Mr.B.Singaravelu

ORDER

For the sake of convenience, the parties are referred to as "Complainant" and "Accused".

2. The complainant is a Company registered under the Companies Act, 1956, engaged in the manufacture of cotton yarn. The accused was a customer of the complainant company. On 18.05.2004, the accused purchased cotton yarn for Rs.8,07,000/- and gave Rs.30,000/- on 24.12.2004. For the balance amount, the accused issued the impugned cheque for Rs.7,77,000/- drawn on IDBI Bank, Tiruppur in favour of the complainant. The



complainant presented the cheque for payment before the Indian Bank, Salem Main Branch, where the company had its account and the cheque was returned with an endorsement "Funds Insufficient".

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3. The complainant issued Statutory Notice (Ex.P3) on 16.03.2005 under Section 138 of the Negotiable Instruments Act, 1881 [in short "N.I. Act"], which was received by the accused on 17.03.2005, as could be seen from the Postal Acknowledgment Card (Ex.P4). Since the accused did not comply with the demand notice, the complainant initiated the prosecution in S.T.C.No.47 of 2007 before the Court of Judicial Magistrate No.I, Salem under Section 138 of the N.I. Act. On the appearance of the accused, he was questioned under Section 251 CrPC on the substance of allegations in the complaint, which he denied.

4. To prove the case, the complainant examined himself as PW1 and marked 9 exhibits. When the accused was questioned under Section 313 CrPC, he did not give any satisfactory explanation for the incriminating circumstances appearing against him. The accused examined himself as DW1 and no document was marked on his behalf.

5. After considering the evidence on record and on hearing either side, the Trial Court, vide judgment dated 14.10.2014 in S.T.C.No.47 of 2007, convicted the accused under Section 138 of the N.I. Act and sentenced him to undergo 1 year simple imprisonment and to pay Rs.10,00,000/- as compensation to the complainant.

6. Challenging the conviction and sentence, the accused filed C.A.No.146 of 2014 before the Sessions Court, which has been dismissed by the III Additional District and Sessions Judge, Salem on 27.11.2015. Challenging the judgment of conviction and sentence passed by the Trial Court and the Appellate Court, the accused is before this Court.

7. Heard Mr.J.Franklin, learned counsel for the petitioner / accused and Mr.V.S.Kesavan, learned counsel for the complainant.

8. The learned counsel for the accused submitted that the complainant has failed to prove that there was a valid debt and that the cheque was issued in discharge of the said debt. He also contended that the complainant had failed to prove the ingredients of the offence under Section 138 of the N.I. Act.

9. Per contra, the learned counsel for the respondent/complainant refuted the contentions.



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

11. Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc., [2004 (7) SCC 659]:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23.On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and,



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therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

12. This Court has carefully perused the evidence on record, bearing in mind the law laid down by the Supreme Court in Jagmohan Singh (supra).

13. PW1, in his evidence, has stated that the accused had purchased yarn for a sum of Rs.8,07,000/- on credit from the complainant company on 18.05.2004, to prove which he marked the Invoice (Ex.P5) dated 18.05.2004. He has further stated that the accused paid Rs.30,000/- on 24.12.2004 and for the balance amount, he issued the impugned cheque (Ex.P1) bearing No.008430 dated 15.02.2005. When the cheque was presented on 15.02.2005, it was returned with an endorsement "Funds Insufficient" vide Return Memo (Ex.P2) dated 18.02.2005. The complainant issue Statutory Notice (Ex.P3) dated 16.03.2005, within 30 days, which was received by the accused on 17.03.2005, vide postal Acknowledgment Card (Ex.P4). Since the accused did not comply with the demand, the complainant preferred the complaint on 20.04.2005 itself, within the statutory period of limitation.

14. Thus, this Court does not find any violation of the mandatory requirements for initiation of prosecution under Section 138 of the N.I. Act. PW1 has also marked Income Tax Return for the year 2005-2006 (Ex.P6), Ledger Account for the year 2004 - 2005 (Ex.P7), Form 32 (Ex.P8) and Memorandum of Association (Ex.P9) in order to show that the debt was reflected in its accounts. In the cross examination, the accused has not denied the issuance of the impugned cheque. In fact, the accused examined himself as DW1 and honestly stated that he had purchased yarn for Rs.8,07,000/- towards which, he gave the cheque for Rs.7,77,000/-.

15. In the light of such overwhelming evidence incriminating the accused, it could not be stated that the Trial Court and the Appellate Court had committed any illegality or irregularity in convicting and sentencing the petitioner/accused.

16. In the result, this Criminal Revision Petition is devoid of merits and accordingly, dismissed. The dismissal of this revision petition will not preclude the parties to arrive



at a compromise under Section 147 of the N.I. Act. The Trial Court is directed to secure the accused for undergoing the period of sentence.

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Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. III Additional District and Sessions Judge,
Salem.
2. Judicial Magistrate No.1, Salem.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.S.Kesavan, Advocate, S.R.No.57520

+lcc to Mr.J.Franklin, Advocate, S.R.No.57125

Cr1.Rc.No.158 of 2016

RR(CO)

RRS (30/08/2019)