

BAIL SLIP

The Petitioner in CrI.RC.339/14 Viz, Mrs.Irine Gunasekaran, aged 40 years W/o.Gunasekaran was directed to be released on bail as per order dated 27/3/14 and made in Mp 1/14 in CrI.R.C.339/14.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.11.2019

DELIVERED ON: 29.11.2019

CORAM:

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

CrI.R.C. No.339 of 2014

Irine Gunasekaran Petitioner/Appellant/Accused

vs.

K. Chandran Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to call for the records relating to the judgment and order dated 03.03.2014 passed in CA. No.114 of 2010 on the file of the V Additional Sessions Court, Chennai, confirming the judgment and order dated 14.06.2010 passed in C.C. No.2703 of 2008 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and set aside the same.

For petitioner: Mr. S.P. Harikrishnan

For respondent: Mr. K.R. Ramesh Kumar

ORDER

For the sake of convenience, the petitioners and the respondent would be referred to as accused and complainant respectively.

2 It is the case of the complainant that he is the Proprietor of SKB Foundation and is a flat promoter and developer; the accused and her husband were introduced to the complainant by his relative by name Karuppiyah; the accused

wanted a loan of Rs.20 lakhs in June 2006 for purchase of a land and agreed to repay the same within 15 days; believing her representation, the complainant gave a bearer cheque in the name of Gunasekaran, the husband of the accused; the accused and her husband collected the money from the bank and when the complainant started demanding return of money, the accused issued two cheques (Exs.P.2 and P.3), both dated 05.07.2007 for Rs.9,75,000/- each; at the request of the accused, the complainant presented the cheques only in September 2007 and they were returned unpaid with the endorsement "funds insufficient" vide return memo (Ex.P.4); the accused issued a statutory demand notice dated 17.09.2007 (Ex.P.5), which was not received by the accused and the same was returned with the endorsement "unclaimed, returned to sender" on 28.09.2007 (Ex.P.6); therefore, the complainant initiated a prosecution in C.C. No.2703 of 2008 before the XVIII Metropolitan Magistrate, Saidapet, Chennai.

3 Before the trial Court, the complainant examined herself as P.W.1 and one Rathnaveluswamy as P.W.2 and marked Exs.P.1 to P.9.

4 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against her, she denied the same and did not offer any explanation as to the circumstances under which the cheques in question came into the possession of the complainant. On the side of the accused, one Vasudevan was examined as D.W. 1 and one exhibit was marked.

5 The trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 14.06.2010 in C.C. No.2703 of 2008, convicted the accused and sentenced her to undergo three months simple imprisonment and pay compensation of Rs.39 lakhs, in default to undergo three months simple imprisonment.

6 Challenging the conviction and sentence imposed on her by the trial Court, the accused preferred Crl.A. No.114 of 2010 which was heard by the V Additional Sessions Court, Chennai. At the appellate stage, the accused preferred an application under Section 391 Cr.P.C. and adduced additional evidence by examining her husband Gunasekaran as D.W.2 and marked Exs.D.2 to D.4. The appellate Court considered the additional evidence also and dismissed the appeal vide judgment and order dated 03.03.2014 and confirmed the order of the trial Court.

7 Assailing the concurrent findings of the two Courts below, the accused has preferred the instant criminal revision invoking Section 397 read with Section 401 Cr.P.C.

8 At the time of admission of this criminal revision, suspension of sentence and bail was granted to the accused in M.P. No.1 of 2014 in Crl.R.C. No.339 of 2014 by this Court on 27.03.2014 and as a condition precedent for the said relief, the accused was directed to deposit 25% of the compensation amount in the trial Court. The said miscellaneous petition was listed on 07.04.2014 under the caption "for being mentioned", on which date, this Court directed the accused to deposit 25% of the cheque amount instead of 25% of the compensation amount, as ordered on 27.03.2014. The said order was modified by this Court vide order dated 02.07.2014 in M.P. No.5 of 2014, in and by which, the accused was directed to deposit a sum of Rs.2.50 lakhs in the trial Court. It is not known whether the accused had complied with the said order.

9 On 22.11.2019, when the matter was taken up for final hearing, Mr.Sankarasubbu, learned counsel for the accused submitted that the accused had taken away the brief from him and that he has also given change of vakalat. However, no change of vakalat has been filed in the Registry.

10 This Court could have cancelled the suspension of sentence and bail for the dilatory tactics adopted by the accused. Yet, this Court did not want to take such an extreme step, inasmuch as the accused is a lady. Hence, this Court appointed Mr. S.P. Harikrishnan (Enrolment No.2716 of 2006) to take up the case of the accused pro bono and argue and furnished copies of typed set of papers to him, adjourning the matter to 26.11.2019 for hearing.

11 Heard Mr. S.P. Harikrishnan, learned counsel for the accused and Mr.K.R. Ramesh Kumar, learned counsel for the complainant.

12 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.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

"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)

13 Coming to the case at hand, the complainant examined himself as P.W.1 and has spoken about the loan of Rs.20 lakhs that was given by him to Gunasekaran, husband of the accused by issuing a bearer cheque, issuance of two impugned cheques for Rs.9,75,000/- each by the accused towards discharge of the debt, their presentation and dishonour, issuance of legal notice, return of the notice unserved and the failure of the accused to comply with the demand. The complainant also marked his income tax returns as Exs.P.7 to P.9 in order to show that he has been declaring to the Income Tax Department about the loan that was given to the husband of the accused.

14 The accused examined the Branch Manager of the complainant's bank as D.W.1 and he (D.W.1) has also stated that the complainant has issued a bearer cheque for Rs.20 lakhs in the name of Gunasekaran which was encashed by the said Gunasekaran.

15 The learned counsel for the accused contended that Gunasekaran took the money, but, handed it over to the complainant. This defence has been rejected rightly by both the Courts below. In the appellate Court, the accused adduced additional evidence and it was found by the appellate Court that the additional evidence had no relevance to the case at hand. The accused examined her husband Gunasekaran as D.W.2 and marked a Memorandum of Understanding dated 03.05.2007 as Ex.D.2. This Memorandum of Understanding is between Gunasekaran (D.W.2) and one Karuppiyah and there is no signature of the complainant in the Memorandum of Understanding. Likewise, even in Ex.D.3, sale agreement entered into between one Jayaveeran and Karuppiyah, there is no reference to the name of the complainant. Lastly, the accused marked Ex.D.4, a police complaint that was given to the Commissioner of Police on 07.03.2013. It is worth pointing out that the trial Court had conducted trial during the period 2008-2009 itself and the judgment itself was pronounced by the

trial Court on 14.06.2010. Hence, the police complaint (Ex.D.4) that was given in the year 2013 had no relevance to the case at hand.

16 In view of the foregoing discussion, this Court does not find any infirmity in the findings arrived at by the two Courts below warranting interference.

In the result, this criminal revision is dismissed. The trial Court is directed to secure the presence of the accused and commit her to prison for serving out the period of sentence. Liberty is given to the parties to approach the trial Court for compounding the offence under Section 147 of the NI Act, even after the accused is taken into custody and in the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Side) of this Court, who shall make it form part of the records in Crl.R.C. No.339 of 2014. 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.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

cad

To

1.The XVIII Metropolitan Magistrate
Saidapet
Chennai.

2.-do-Thro'The Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The V Additional Sessions Judge
Chennai.

4.-do-Thro'Principal Sessions Judge,
Chennai.

5.The Deputy Registrar (Crl.Side)
High Court of Madras

Chennai 600 104

} with a direction
to transmit the
original records
to the respective
Courts, forthwith

6.The Assistant Registrar,
Criminal Section, High Court, Madras.

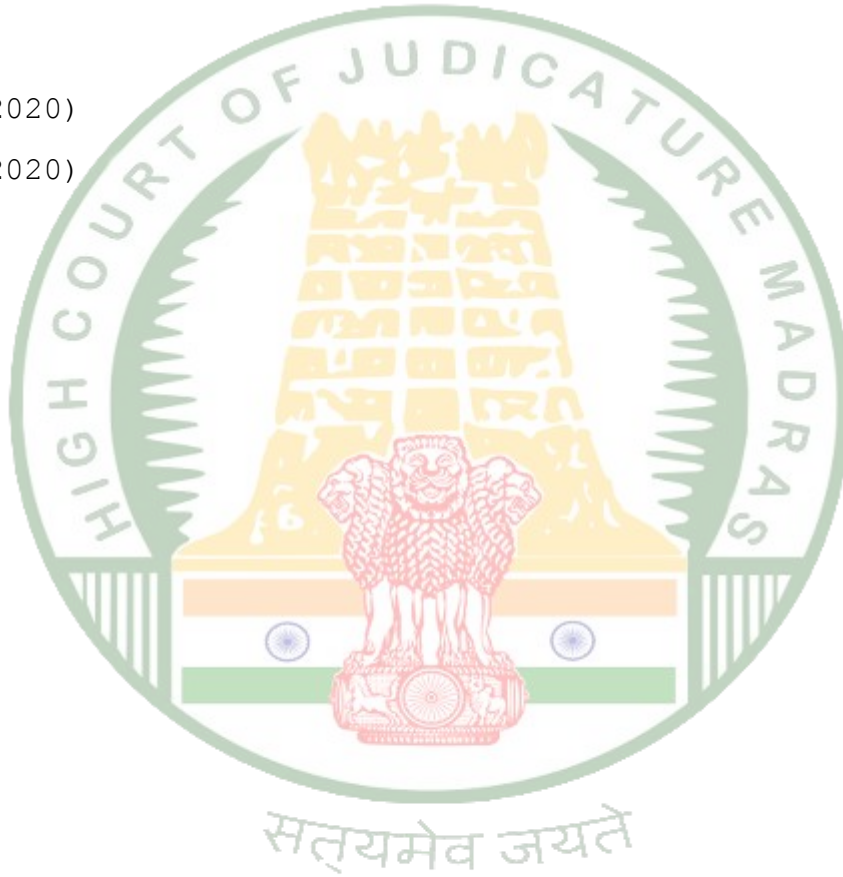
+lcc to M/s.K.R.Ramesh Kumar, Advocate SR.99620.

Crl.R.C. No.339 of 2014

VD(CO)

CB(09/01/2020)

CB(22/01/2020)



WEB COPY