

BAIL SLIP

By order dated 04/09/2013 in MP.No.1 of 2013 the petitioner M/s.Sri Balaji & Co rep by its proprietor Varadaraja was directed was released on bail.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1092 of 2013

M/S.Sri Balaji & Co.,
Represented by its
Proprietor, Varadharajan,
S/o.Dhanasekaran,
No.22, Vadivel Street, 1st Cross,
Kattabomman Block,
Jafferkhanpet,
Chennai - 600 083.

... Petitioner/Appellant/
Accused

Vs.

P.Damodharan

... Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 10.08.2012 passed in S.T.C.No.112 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 23.04.2013 passed in C.A.No.258 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.A.Shiv Kumar

For Respondent : Mr.S.Arivazhagan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 10.08.2012 passed in S.T.C.No.112 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 23.04.2013 passed in C.A.No.258 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore.

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 borrowed a sum of Rs.20,00,000/- on 10.04.2011 and executed a promissory note (Ex-P1) for the said amount, promising to repay the amount on demand with interest; when the complainant demanded the return of the amount, the accused issued a cheque (Ex-P2) dated 15.10.2011 bearing no.002837 drawn on State Bank of Travancore; the complainant presented the impugned cheque (Ex-P2) and it was returned unpaid with the endorsement "Exceeds Arrangement" vide bank's return memo (Ex-P3) dated 15.10.2011; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 22.10.2011, which was received by the accused on 31.10.2011 vide postal acknowledgement card (Ex-P5); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.32 of 2012 before the Judicial Magistrate No.VII, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused. On transfer of the case to the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, it was re-numbered as S.T.C.No.112 of 2012.

4. Before the trial Court, the complainant examined himself as PW1 and marked five exhibits.

5. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same and did not give any explanation as to the circumstances, under which, the impugned cheque (Ex-P2) issued by him came into the hands of the complainant. On behalf of the accused, no witness was examined nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.08.2012 in S.T.C.No.112 of 2012, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

7. The appeal in C.A.No.258 of 2012 filed by the accused was dismissed by the IV Additional District and Sessions Court, Coimbatore, on 23.04.2013.

8. Aggrieved by the concurrent findings of fact arrived at by the Courts below, the accused have preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

9. Heard Mr.A.Shiv Kumar, learned counsel for the accused and Mr.S.Arivazhagan, learned counsel for the complainant.

10. Before advertng to the rival submissions, it is necessary to state here 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:

"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)

11. In the case at hand, the complainant, in his evidence, has spoken to about the loan of Rs.20,00,000/- that was given to the accused on 10.04.2011, the execution of the promissory note (Ex-P1), issuance of the impugned cheque (Ex-P2), its presentation and dishonour on the ground "Exceeds Arrangement", issuance of the statutory demand notice (Ex-P4) and the failure of the accused to comply with the demand.

1(2004) 7 SCC 659

2(2019) 4 SCC 197

12. The learned counsel for the accused submitted that the complainant is a money lender and has not registered under the Tamil Nadu Money Lenders Act, 1957 (in short "the TNML Act") and therefore, the entire transaction is void. He further submitted that for sustaining a prosecution under Section 138 of the NI Act, the debt should be a 'legally enforceable debt' and not a debt void under the Indian Contract Act, 1872.

13. The above submissions of the learned counsel for the accused deserve to be rejected. At the time of borrowing the money, the accused did not choose to investigate whether the complainant was registered under the TNML Act. After having borrowed money from the complainant, the accused cannot repudiate the debt by saying that the contract itself is void because the complainant was not registered under the TNML Act. Moreover, the accused has admitted his signature in the cheque (Ex-P2).

14. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability as held by the Supreme Court in Rangappa Vs Sri Mohan³, even that has not been done in this case.

15. In view of the foregoing discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

16. The learned counsel for the complainant submitted that the accused has paid a sum of Rs.4,00,000/-, whereas, the learned counsel for the accused submitted that only a sum of Rs.3,50,000/- has been paid and this is recorded.

In the result, this criminal revision is dismissed. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, *ibid.*, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the

³ (2010) 11 SCC 441

records in CrI.R.C.No.1092 of 2013. 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/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

nsd

To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.
2. The IV Additional District
and Sessions judge,
Coimbatore.
3. The Deputy Registrar,
(CrI.Side) with a direction to return the
original records to the Courts
below concerned
Madras High Court,
Chennai - 104.

+1 cc to Mr.A.Shivkumar Advocate sr9243
+1 cc to Mr.S.Arivazhagan Advocate sr8757

CrI.R.C.No.1092 of 2013

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