

Bail Slip

The Accused/Appellant namely Sathish Kumar S/o.Palanisamy directed to be released on bail as per the order of this Court dated 05.09.2013 and made in MP.No.1/2013 in CrI.R.C.No.1096 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1096 of 2013

Sathish Kumar

..Petitioner/Appellant/Single Accused

Vs.

Vidhyasagar

.. Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 17.01.2013 passed in C.C.No.276 of 2007 on the file of the Judicial Magistrate Court No.II, Erode, confirmed by the judgment and order dated 04.04.2013 passed in C.A.No.7 of 2013 on the file of the Principal Sessions Court, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.S.Kaithamalaikumaran

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 17.01.2013 passed in C.C.No.276 of 2007 on the file of the Judicial Magistrate Court No.II, Erode, confirmed by the judgment and order dated 04.04.2013 passed in C.A.No.7 of 2013 on the file of the Principal Sessions Court, Erode.

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

3. The facts of the case gleaned from the evidence on record show that the accused had borrowed a sum of Rs.1,12,560/- on 13.11.2006 as hand loan from the complainant and had issued a cheque (Ex-P1) dated 14.12.2006 for the said sum; the complainant presented the cheque (Ex-P1) on 24.02.2007 and it was returned unpaid with the endorsement "Funds Insufficient" on 26.02.2007 vide bank's return memo (Ex-P3); therefore, the complainant issued a statutory demand notice (Ex-P4) dated 01.03.2007, which was received by the accused vide postal acknowledgement card (Ex-P6) dated 01.03.2007; the accused neither replied to the statutory demand notice (Ex-P4) nor complied with the demand; hence, the complainant initiated a prosecution in C.C.No.276 of 2007 before the Judicial Magistrate No.II, Erode, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

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

5. When the accused was questioned under Section 313 Cr.P.C. On the incrimination circumstances appearing against him, he denied the same and did not come forward to give explanation as to how his cheque (Ex-P1) 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 17.01.2013 in C.C.No.276 of 2007, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay the cheque amount of Rs.1,12,560/- as compensation.

7. The appeal in C.A.No.7 of 2013 filed by the accused was dismissed by the Principal Sessions Court, Erode, on 04.04.2013.

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

9. Heard Mr.M.Guruprasad, learned counsel for the accused and Mr.S.Kaithamalaikumaran, learned counsel for the complainant.

10. Before advertng to the rival submissions, it may be 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 stated about the hand loan taken by the accused, issuance of the impugned cheque (Ex-P1), its presentation and dishonour, issuance of the statutory demand notice (Ex-P4) and the failure of the accused to comply with the demand.

12. In the cross-examination of the complainant, the accused had taken a defence that the complainant had given a loan to one Ravi and was not able to realise it, because, the said Ravi had filed a petition for insolvency before the Subordinate Court, Erode; Ravi had handed over the impugned cheque (Ex-P1) of the accused to the complainant for filing a prosecution and realizing the amount.

13. Both the Courts below have rightly disbelieved this defence, because, the accused, except suggesting his defence in the cross-examination of the complainant, did not place any material to support it. The accused has not explained as to how the cheque (Ex-P1) signed by him went into the hands of Ravi and the circumstances under which, Ravi had handed over the impugned cheque (Ex-P1) to the complainant.

1(2004) 7 SCC 659

2(2019) 4 SCC 197

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.

In the result, this criminal revision is dismissed as being devoid of merits. 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 records in Crl.R.C.No.1196 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/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
Erode.
- 2.The Chief Judicial Magistrate,
Erode.
3. The Principal Sessions Judge,
Erode.
- 4.The Superintendent,
Central Prison,
Coimbatore.

³ (2010) 11 SCC 441

5. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return the
original records to the Courts
below concerned

6.The Public Prosecutor,
High Court, Madras-104.

7.The Assistant Registrar(Criminal Side),
High Court, Madras.

+lcc to Mr.M.Guruprasad, Advocate sr.7911

Crl.R.C.No.1096 of 2013

vba(co)
nr 05/03/2020



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