BAIL SLIP

The Appellant/Accused No.1, viz., Vijaya W/o.George Stephen was released on bail vide Court order dated 13/09/2013 in Crl.MP.No. 1 of 2013 in Crl.R.C.No.1117/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1117 of 2013

G.Vijaya .. Petitioner/Appellant/1st Accused

Vs.

1. R.Meganathan .. Respondent/Respondent/Complainant
2. George Stephen (Not Pressed) .. Respondent/Appellant/2nd Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 16.08.2012 passed in C.C.No.2594 of 2010 on the file of the Metropolitan Magistrate Court (Fast Track Court No.II), Egmore, confirmed by the judgment and order dated 13.08.2013 passed in C.A.No.160 of 2012 on the file of the XVIII Additional Sessions Court, Chennai.

For Petitioner : Mr.R.Radha Pandian
For R1 : Mr.R.Karthikeyan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 16.08.2012 passed in C.C.No.2594 of 2010 on the file of the Metropolitan Magistrate Court (Fast Track Court No.II), Egmore, confirmed by the judgment and order dated 13.08.2013 passed in C.A.No.160 of 2012 on the file of the XVIII Additional Sessions Court, Chennai.

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

3. It is the case of the complainant that in June 2009, the accused borrowed a sum of Rs.1,50,000/- and towards the discharge of the said debt, the accused issued a cheque (Ex-P1) bearing no.507781 dated 10.10.2009 drawn on State Bank of India,

Vellore Branch; the complainant presented the impugned cheque (Ex-P1) and the same was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P2) dated 24.11.2009; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 07.12.2009, which was received by the accused vide postal acknowledgement card (Ex-P6); since the accused did not reply to the said notice nor comply with the demand, the complainant initiated a prosecution in C.C.No.2594 of 2010 before the Metropolitan Magistrate (Fast Track Court No.II), Egmore, 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 Senthil Kumar as PW2 and marked six exhibits. The complainant was cross-examined by the accused on 27.06.2011. Thereafter, the complainant was recalled and was further examined-in-chief (wrongly typed as cross-examination in the deposition) on 09.03.2012 and the promissory note (Ex-P7) dated 01.06.2009 was marked as Ex-P7. In the said promissory note (Ex-P7), two persons were shown as attesting witnesses viz., Sheela (DW3) and Senthil Kumar (PW2). The complainant examined Senthil Kumar (PW2) in order to prove the promissory note (Ex-P7).

5. The accused examined herself as DW1, Vijayan, Manager, State Bank of India, Vellore Branch as DW2 and Sheela, one of the attesting witnesses in the promissory note (Ex-P7) as DW3 and marked five exhibits.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 16.08.2012 in C.C.No.2594 of 2010, convicted the accused of the offence under Section 138 of the NI Act and sentenced her to pay a fine of Rs.1,70,000/- out of which, Rs.1,50,000/- was directed to be paid as compensation to the complainant, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.160 of 2012 filed by the accused was dismissed by the XVIII Additional Sessions Court, Chennai, on 13.08.2013.

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.R.Radha Pandian, learned counsel for the accused and Mr.R.Karthikeyan, learned counsel for the complainant.

10. This Court is aware of the legal position that, while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence like a second appellate Court. However, if it is found that both the Courts below had mis-appreciated

the evidence on record, the power of the revisional Court to go into the evidence on record is preserved under Section 401 (1) Cr.P.C.

11. The complainant examined himself as PW1 and spoke about the loan of Rs.1,50,000/-, issuance of the cheque (Ex-P1) for the said sum, its presentation and dishonour, issuance of the statutory demand notice (Ex-P4) and the failure of the accused to comply with the demand.

12. The learned counsel for the complainant submitted that when the accused has admitted her signature in the cheque (Ex-P1), the presumptions under Sections 118 and 139 of the NI Act would follow suit and both the Courts below have returned a finding that the accused had miserably failed to discharge the said statutory presumptions.

13. The defence of the accused, as could be seen from the evidence adduced by her, shows that she was working as a cook in a house of a Doctor in Vellore, which is about 150 kms from Chennai. The accused has stated that she has taken a hand loan of Rs.2,000/- from Poongothai without the knowledge of her husband, but was not able to pay the meter interest charged by Poongothai; Poongothai wanted some cheques as security for the return of loan, and so, she handed over two blank cheques signed by her in respect of the joint account that was standing in the names of her husband along with her in State Bank of India, Vellore Branch; Poongothai also obtained blank promissory notes from her; when she was not able to discharge the debt, Poogothai handed over one cheque bearing no.507782 to her own sister-in-law Sumathi and the present cheque (Ex-P1) bearing no.507781 to the complainant herein, who is none other than Poongothai's brother-in-law; Sumathi presented the cheque given to her and after it was dishonoured, she issued a statutory demand notice, for which, a reply notice dated 17.08.2011 was issued; thereafter, Sumathi initiated a prosecution in C.C.No.699 of 2011 before the Judicial Magistrate (Fast Track Court), Vellore, for the offence under Section 138 of the NI Act; Meganathan, the complainant herein, presented the impugned cheque (Ex-P1) in the Indian Overseas Bank, Chennai and after it was dishonoured, he initiated the present prosecution in C.C.No.2594 of 2010 before the Metropolitan Magistrate (Fast Track Court No.II), Chennai.

14. Thus, the accused faced two prosecutions and was eventually acquitted in the prosecution initiated by Sumathi on 14.12.2011 vide certified copy of the order (Ex-D5), but was convicted in the prosecution initiated by Meganathan , the complainant herein, before the Metropolitan Magistrate Court (Fast Track Court No.II), Egmore, which was confirmed by the XVIII Additional Sessions Court, Chennai.

15. It is trite that 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 Mohan[1].

16. In this case, the complainant, in his statutory demand notice (Ex-P4), complaint and in the first chief-examination, had merely stated that the accused borrowed a sum of Rs.1,50,000/- in June 2009. There was no whisper of any promissory note (Ex-P7) till then. After the complainant was cross-examined by the accused on 27.06.2011, the complainant was recalled and the promissory note (Ex-P7) dated 01.06.2009 was marked.

17. In the cross-examination, the complainant admitted that Poongothai is his elder brother Chandrasekaran's wife and Sumathi is his own sister. He further clearly stated that the loan of Rs.1,50,000/- was taken by the accused in the house of Sumathi in Vellore. However, Senthil Kumar (PW2), one of the attesting witnesses in the promissory note (Ex-P7), has stated in the chief-examination itself that the loan was given by the complainant to the accused in the house of the complainant in Chennai and the promissory note (Ex-P7) was executed there.

18. When Senthil Kumar (PW2) was asked in the cross-examination as to when Sheela (DW3), the other attesting witness, signed in the promissory note (Ex-P7), he stated that he does not know. He (PW2) also stated that Sheela (DW3) was not there at that time.

19. This Court is aware that a promissory note does not require witnesses. However, in this case, the complainant has had the promissory note (Ex-P7) attested by two witnesses and had chosen to examine one of them as PW2.

20. The accused examined herself as DW1 and explained the entire facts and circumstances, under which, the impugned cheque (Ex-P1) came into the hands of the complainant. The complainant was not able to make any dent in the testimony of the accused in the cross-examination. In fact, the cross-examination is bereft of even the minimum suggestions.

21. The accused has marked the order of acquittal in the prosecution initiated by Sumathi in Vellore as Ex-D5. The order of acquittal (Ex-D5) will not bind the trial Court in this case. The said order can be used only to prove the fact that a prosecution was launched by Sumathi in respect of cheque no.507782 before the Magistrate in Vellore, in which, the accused was acquitted. To that extent, the case of the accused stands probablized.

1 (2010) 11 SCC 441

22. The accused examined Sheela as DW3, who, in her evidence, has stated that the accused had borrowed a sum of Rs.1,50,000/- from Poongothai, for which, Poongothai obtained a blank promissory note (Ex-P7) and obtained her signature as witness in that.

23. An analysis of the evidence of the complainant (PW1) and Senthil Kumar (PW2) show inherent contradictions. The complainant has stated that the loan was given in Vellore and the promissory note (Ex-P7) was executed there; Senthil Kumar (PW2) has stated that the loan was given in Chennai and the promissory note (Ex-P7) was executed there. Sheela (DW3) has stated that the loan was given by Poongothai, who collected a blank promissory note (Ex-P7), in which, she signed as an attesting witness. That is exactly the reason why the existence of the promissory note (Ex-P7) was not pleaded by the complainant, but was introduced subsequently, as alluded to above, to bolster his case. In fact, the complainant need not have introduced the promissory note (Ex-P7) at all and could have rested his case, as if a hand loan was taken by the accused.

24. In such perspective of matter, this Court is of the opinion that the accused has discharged the burden under Sections 118 and 139 of the NI Act and consequently, she deserves to be acquitted.

25. As a result, this criminal revision is allowed by setting aside the judgment and order dated 16.08.2012 passed in C.C.No.2594 of 2010 on the file of the Metropolitan Magistrate Court (Fast Track Court No.II), Egmore, confirmed by the judgment and order dated 13.08.2013 passed in C.A.No.160 of 2012 on the file of the XVIII Additional Sessions Court, Chennai.

Ex consequenti, the accused is acquitted of the charge under Section 138 of the NI Act. The bail bond executed by the accused shall stand cancelled. Fine amount, if any, paid by the accused shall be refunded. 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 refunded to her.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Metropolitan Magistrate,
   (Fast Track Court No.II),
   Egmore.

2. The Chief Metropolitan Magistrate,
   Egmore, Chennai.

3. The XVIII Additional Sessions Judge,
   Chennai.

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

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

+1cc to Mr.R.Radhapandian, Advocate, S.R.No. 8334
+2cc to Mr.R.Karthikayan, Advocate, S.R.No. 8292

Crl.R.C.No.1117 of 2013

CA(CO)
GN(12/03/2020)