

BAIL SLIP

The Accused/Appellant namely M.Thangamani, W/o.Mohanraj, was directed to be released on bail as per the order of this court dated 18/09/2013 and made in MP.1 of 13 in CrI.R.C.No.1135 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1135 of 2013

M.Thangamani,
W/o.Mohanraj,
Proprietrix of
M/s.Thangamani Textile,
North Thotom,
Vellanaipatti, Coimbatore. ...Petitioner/Appellant/Accused

Vs.

R.Damodaran,
S/o.Ramasamy,
Proprietor of
M/s.Aardee Industries,
Avarampalayam,
Coimbatore - 641 006. ... Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 30.11.2012 passed in S.T.C.No.86 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 27.06.2013 passed in C.A.No.342 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.P.Duraiswamy

For Respondent : Mr.A.Camyles Gandhi
for Mr.P.Saravana Sowmiyan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 30.11.2012 passed in S.T.C.No.86 of 2012 on the file of the Judicial Magistrate Court (Fast Track

Court No.II), Coimbatore, confirmed by the judgment and order dated 27.06.2013 passed in C.A.No.342 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 took a hand loan of Rs.1,00,000/- on 04.02.2008 and on the same day, gave a post dated cheque (Ex-P1) dated 04.03.2008 bearing no.615627 for a sum of Rs.63,440/-; the complainant presented the cheque (Ex-P1) on

04.03.2008 and it was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P2) dated 03.06.2008; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 01.07.2008, which was received by the accused on 08.07.2008 vide postal acknowledgement card (Ex-P5); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.442 of 2009 before the Judicial Magistrate Court No.IV, 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.86 of 2012.

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

5. The accused examined herself as DW1 and one Sivakumar as DW2 and marked two exhibits.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.11.2012, convicted the accused of the offence under Section 138 of the NI Act and sentenced her to undergo three months simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.342 of 2012 filed by the accused was dismissed by the IV Additional District and Sessions Court, Coimbatore, on 27.06.2013.

8. Aggrieved by 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.P.Duraiswamy, learned counsel for the accused and Mr.A.Camyles Gandhi, learned counsel representing Mr.P.Saravana Sowmiyan, learned counsel on record 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 is the Proprietor of Aardee Industries, where, cone winding machines are manufactured. The accused is the Proprietrix of Thangamani Textile, which is a textile manufacturing unit. Though Thangamani Textile stands in the name of the accused, her husband is managing the day-to-day affairs of the business. The accused had placed an order for the supply of one cone winding machine valued at Rs.2.77 lakhs, towards which, Rs.2.10 lakhs was paid; the invoice dated 21.06.2007 for the purchase of cone winding machine has been marked as Ex-D1.

12. A perusal of the invoice (Ex-D1) shows that the same has been issued by Aardee Industries owned by the complainant in favour of Thangamani Textile owned by the accused. The price of the machine is shown as Rs.1.04 lakhs, but, there are other spare parts, for which, the total value was fixed at Rs.2.77 lakhs.

13. It is the case of the accused that the complainant agreed to take back the old machine at a cost of Rs.30,000. The complainant has written down the amounts in a piece of paper in his own handwriting and given it to the accused and the said piece of paper has been marked as Ex-D2. Accordingly, only a sum of Rs.31,500/- was due to the complainant for the purchase of cone winding machine and the impugned cheque (Ex-P1) for Rs.63,440/-, which was given at the inception, had lost its relevance in the light of the subsequent developments.

14. In the cross-examination, the complainant has admitted that he had issued the invoice (Ex-D1), however, denied the suggestion that, there was no hand loan transaction.

15. The accused, who examined herself as DW1 has stated that she had not taken any hand loan from the complainant on 04.02.2008 and that the impugned cheque (Ex-P1) was given only towards the purchase of the cone winding machine.

16. In the cross-examination of the accused, it has been

suggested that the chit (Ex-D2) was written by the complainant, but, was given for a different transaction. In other words, the complainant has not denied Exs-D1 & D2 and has taken a stand that the loan transaction had nothing to do with Exs-D1 & D2.

17. Admittedly, the complainant is not into any finance business, rather, he is a manufacturer of cone winding machines, etc. The impugned cheque (Ex-P1) has been issued not in the name of the complainant, but, in the name of Aardee Industries. The impugned cheque (Ex-P1) has not been issued from the personal account of the accused, but from the account of Thangamani Textile. Concededly, the complainant did not take any document like promissory note, etc., from the accused at the time of giving hand loan. Of course, the presumption under Section 139 of the NI Act, will enure in favour of the complainant and therefore, he need not have to prove the debt. However, 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 Mohan¹.

18. The accused has examined one Sivakumar as DW2, who has stated that he acted as a broker between the complainant and the accused in the purchase of cone winding machine. He has clearly stated that the total value was fixed at Rs.2.77 lakhs and Rs.2.10 lakhs was given to the complainant by the accused. He has also stated that the spare parts were separately valued and both parties agreed to give deduction to them. This witness has also stated that some amount is due from the accused to the complainant in the purchase of the machine. The accused has also admitted that she has to give Rs.31,500/- to the complainant. It is strange as to how, for a loan of Rs.1,00,000/-, the accused would have given the cheque (Ex-P1) for Rs.63,440/-.

19. Thus, on a conspectus of the proved facts in this case, this Court is of the view that the accused has probablised her defence that there was no hand loan transaction, but, a transaction concerning purchase of cone winding machine from the complainant and the impugned cheque (Ex-P1) was given in connection with that. Both the Courts below have failed to appreciate the evidence on record in the proper perspective.

In the result, this criminal revision is allowed by setting aside the judgment and order dated 30.11.2012 passed in S.T.C.No.86 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 27.06.2013 passed in C.A.No.342 of 2012 on the file of the IV Additional District and Sessions Court, Coimbatore. As a sequel, 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 (CCC)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.
- 2.The Chief Judicial Magistrate,
Coimbatore (for information)
3. The IV Additional District and
Sessions Judge,
Coimbatore
4. The Deputy Registrar,
(Crl.Side) with a direction to return the
original records to the Courts
Madras High Court, below concerned
Chennai - 104.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No. 6728

Crl.R.C.No.1135 of 2013

VBA(CO)
GN(04/03/2020)

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