

Bail Slip

The Petitioner/Accused viz Vallinayagam S/o. Shanmuga Nathan was directed to be released on bail as per the order of this Court dated 20.09.2013 in Crl.M.P.Nos.1 and 3/2013 in Crl.R.C.No.1144 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

CRL.R.C.No.1144 of 2013

Vallinayagam

..Petitioner/  
Accused

Vs

P.Arumugam

..Respondent/  
Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 12.08.2013 passed by the IV Additional Sessions Judge, Chennai in C.A.No.50 of 2011 confirming the judgment and order dated 11.02.2011 passed by the VII Metropolitan Magistrate, George Town, Chennai in C.C.No.12384 of 2006.

For Petitioner : No appearance

For Respondent : Notice not served

सतयमेव जयते  
O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 12.08.2013 passed by the IV Additional Sessions Judge, Chennai in C.A.No.50 of 2011 confirming the judgment and order dated 11.02.2011 passed by the VII Metropolitan Magistrate, George Town, Chennai in C.C.No.12384 of 2006.

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 was his neighbour and thus, got acquainted with him; the accused borrowed Rs.50,000/- as hand loan on 26.11.2005 and promised to return the same in a short time; when the complainant started demanding repayment of the amount, the accused gave two cheques viz. cheque No.371798 dated 30.06.2006 for Rs.25,000/- (Ex.P2) and cheque No.371797 dated 25.07.2006 for Rs.25,000/- (Ex.P3), both drawn on Canara Bank, Nerkundram Branch; when the complainant presented the first cheque (Ex.P2) dated 30.06.2006 on 04.07.2006 in Central Bank of India, Mogappair Branch, it was dishonoured on 05.07.2006 on the ground "funds insufficient"; the complainant contacted the accused and informed him about the dishonour, for which, the accused requested the complainant to present both the cheques on 25.07.2006 and that, he would make arrangements for their clearance; accordingly, the complainant presented both the cheques on 25.07.2006 and they were returned unpaid with the endorsements "funds insufficient" vide return memo (Ex.P4); the complainant issued a statutory demand notice dated 18.07.2006 (Ex.P6), for which, the accused issued a reply notice dated 24.08.2006 (Ex.P8) repudiating the debt. Therefore, the complainant initiated a prosecution in C.C.No.12384 of 2006 before the VII Metropolitan Magistrate, George Town, Chennai for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

4.Since the complainant had to go abroad, he gave a power of attorney (Ex.P1) in favour of his wife Shanti to proceed with the case. Accordingly, Shanti filed an application for substitution and it was allowed by the trial Court.

5.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

6.Shanti examined herself as P.W.1 and marked Exs.P1 to P8. She was cross-examined by the accused.

7.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the allegations and did not explain the circumstances under which, the two cheques signed by him went into the hands of the complainant. No witness was examined from the side of the accused nor any document marked.

8.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 11.02.2011 in C.C.No.12384 of 2006, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay the cheque amount

of Rs.50,000/- as compensation to the complainant. The appeal in C.A.No.50 of 2011 that was filed by the accused was dismissed by the IV Additional District and Sessions Judge on 12.08.2013. Challenging the concurrent findings of the two Courts below, the accused has filed the present revision under Section 397 read with 401 Cr.P.C.

9.At the time of admission, this Court, in CrI.M.P.Nos.1 and 3 of 2013 in CrI.R.C.No.1144 of 2013 exempted the accused from surrendering before the appellate Court and suspended the sentence and released him on bail by order dated 20.09.2013. Notice has not been served on the complainant.

10.Under Section 401(2) Cr.P.C., the respondent is required to be heard, only when the Court proposes to pass an order prejudicial to him and not otherwise. Since this Court is not proposing to pass any order prejudicial to the respondent, it is not necessary for this Court to issue fresh summons.

11.When the matter was taken up for hearing on 27.01.2020, there was no representation for the accused. Therefore, this Court adjourned the case to today and directed the Registry to post this criminal revision under the caption "for dismissal". Today, the matter is posted under the caption "for dismissal". There was no representation for the accused. When this Court has admitted a criminal revision, the same cannot be dismissed for default and therefore, this Court perused the original records and the grounds raised by the accused.

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 Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], 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)

13.Shanti, in her evidence, has stated about the loan of Rs.50,000/- that was taken by the accused from her husband on 26.11.2005, the issuance of the two cheques, the presentation of the first cheque on 04.07.2006 and its dishonour; the

presentation of both the cheques on 25.07.2006 at the request of the accused; their dishonour on the ground funds insufficient; issuance of the statutory demand notice; receipt of the reply notice and the failure of the accused to comply with the demand.

14.The defence of the accused as gleaned from the records is that he had wanted to borrow Rs.50,000/- from the complainant; the complainant demanded two post-dated cheques as security, which the accused gave; but, the complainant did not give the loan and had misused the two cheques. It is relevant to extract paragraph Nos.2 and 3 from the reply notice dated 24.08.2006 (Ex.P8) that was issued by the accused to the complainant.

"2.Our client states that he knows your client only for the past six months doing finance business in the neighbourhood and it is true that he approached your client for a loan of Rs.50,000/-.

3.Our client further states that your client informed our client that he had to furnish two post dated cheques in advance after that only your client would pay the loan to our client. And accordingly our client gave two cheques as told and he was asked to come the next week for collecting the loan amount of Rs.50,000/-. But till date our client tried his level best to see your client in his shop but your client made himself not avail in his shop whenever our client visited."

15.This defence has been rejected by both the Courts below. This Court perused the two cheques (Exs.P2 and P3) and found no suspicious feature in it. Of course, the accused has not denied the issuance of the two cheques. The accused has not stated on what date, he gave those two cheques to the complainant. The accused must have probably given the two cheques before 30.06.2006 to the complainant. The complainant has presented the first cheque dated 30.06.2006 only on 04.07.2006 and it was dishonoured. If the accused had given the two cheques without obtaining the loan, he would have issued stop payment instructions to the bank, at least to save the second cheque dated 25.07.2006. He did not do that. The complainant presented both the cheques on 25.07.2006 and they were dishonoured on 01.08.2006 for "insufficiency of funds" and not for stoppage of payment.

16.In the memorandum of grounds, the accused has stated that the complainant would not have given the loan without obtaining a pro-note. The complainant has stated that he knows the accused, who was his neighbour and in good faith, he gave the hand loan of Rs.50,000/-, which cannot be disbelieved, on the ground that he did not take any promissory note. The accused has stated that, the first cheque dated 30.06.2006 bears the

number 371798 and the second cheque dated 25.07.2006 bears the number 371797 and therefore, the accused should have been acquitted.

17.The accused has unequivocally admitted in the reply notice (Ex.P8) that, he has issued two cheques and just because, he put the date 30.06.2006 on the cheque leaf bearing number 371798 and the date 25.07.2006 on the cheque leaf bearing number 371797, for which, the complainant cannot be penalised. The complainant cannot be attributed with any role in the drawing and issuance of the said cheques. It is further contended in the grounds that, the amount of Rs.20,000/- and above, should be given only by cheque and therefore, the statement of the complainant that he had given Rs.50,000/- by cash, should be rejected.

18.This ground deserves to be stated only to be rejected because, failure of the complainant to give the hand loan of Rs.50,000/- by cash, will not by itself lead to the inference that there was no loan transaction. In Uttam Ram Vs. Devinder Singh Hudan & Another [(2019)10 SCC 287], the Supreme Court has held as follows :

"20.The Trial Court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

21. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act ... .."

In such view of the matter, this Court does not find any infirmity in the concurrent findings of the two Courts below, warranting interference.

Ex consequenti, this Criminal Revision is dismissed being devoid of merits. The trial Court is directed to secure the accused and commit him in prison to undergo the remaining period of sentence, if any. 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. It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.* before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in Crl.R.C.No.1144 of 2013. Registry is directed to transmit the original records to the respective Courts forthwith.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Judge  
IV Additional Sessions Court  
Chennai

2. The VII Metropolitan Magistrate  
George Town, Chennai

3.The Deputy Registrar  
Criminal Side  
High Court, Madras

(with a direction to transmit the original records to the respective Courts forthwith)

CRL.R.C.No.1144 of 2013

RR(CO)  
SP(03/03/2020)

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