

Bail Slip

The accused viz., A.Kuppuraj S/o.P.Arumugam was directed to be released on bail vide this Court order dt.04.10.2013 made in MP.1 of 2013 in Crl.R.C.No.1211/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1211 of 2013

A.Kuppuraj

... Petitioner/
Accused

Vs

1.P.Duraisamy
2.Rajammal
3.D.Rajkumar
4.Mohanakumar

... Respondents/

Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the judgment and order dated 24.07.2013 passed by the Additional District and Sessions Judge, Coimbatore in C.A.No.28 of 2012 confirming the judgment and order dated 06.01.2012 passed by the Judicial Magistrate No.I, Pollachi in S.T.C.No.3023 of 2009.

For Petitioner : Mr.P.Kalimuthu

For Respondents : No appearance

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 24.07.2013 passed by the IV Additional District and Sessions Judge, Coimbatore in C.A.No.28 of 2012 confirming the judgment and order dated 06.01.2012 passed by the Judicial Magistrate No.I, Pollachi in S.T.C.No.3023 of 2009.

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

3.It is the case of Duraisamy (the original complainant who died during the appellate proceedings) that, on 15.06.2009, the accused had borrowed Rs.2,00,000/- and gave a cheque dated 15.07.2009 (Ex.P1); Duraisamy presented the cheque on the said date, but, it was returned with the endorsement "insufficient funds" vide return memo (Ex.P2); Duraisamy issued a statutory demand notice dated 20.07.2009 (Ex.P3), for which, the accused gave a reply notice dated 10.08.2009 (Ex.P6) repudiating the debt. Hence, Duraisamy filed S.T.C.No.3023 of 2009 before the Judicial Magistrate No.I, Pollachi for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

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

5.Duraisamy examined himself as P.W.1 and marked Exs.P1 to P6. The accused examined himself as D.W.1 and marked Exs.D1 and D2.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.01.2012 in S.T.C.No.3023 of 2009, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and pay a fine of Rs.5,000/- in default, to undergo two months simple imprisonment. The accused filed appeal in C.A.No.28 of 2012 in the Court of Session and at that time, Duraisamy died and therefore, his legal heirs Rajammal, Rajkumar and Mohanakumar were impleaded as respondents. The appellate Court, by judgment and order dated 24.07.2013 confirmed the conviction, but reduced the substantive sentence of imprisonment to three months simple imprisonment. Challenging the concurrent findings of fact, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8.Notice has been served on the respondents, but, they have not entered appearance. Hence, their names are printed in the cause list.

9. Heard Mr.P.Kalimuthu, learned counsel for the accused, who submitted that the complainant had not proved the debt satisfactorily. He also submitted that the complainant was convicted in a criminal case before the Judicial Magistrate No.III, Pollachi for the offence under Section 120-B, 420, 465, 468 and 469 IPC and therefore, he is a tainted person and his evidence ought to have been rejected.

10. This Court gave its anxious consideration to the submissions made by Mr.Kalimuthu.

11. Duraisamy, in his evidence, has spoken about the loan of Rs.2,00,000/- that was given to the accused on 15.06.2009, the issuance of the impugned cheque dated 15.07.2009, its dishonour, issuance of the statutory demand notice, receipt of reply notice and the failure of the accused to repay the amount. The accused examined himself as D.W.1. and stated that he used to borrow money from the complainant and that, he had borrowed Rs.48,000/- from the complainant and at that time, he had given the impugned cheque as security, which the complainant has misused.

12. This Court perused the impugned cheque (Ex.P1) and did not find any suspicious feature in it. Thus, the accused has not denied the signature in the cheque and has only contended that it was filled in by the complainant himself. In *Bir Singh Vs. Mukesh Kumar* [(2019) 4 SCC 197], the Supreme Court has held that, even if the columns of the cheque was not filled by the accused, but by the complainant, the same cannot be a reason to acquit the accused, in the teeth of the presumptions under Sections 118 and 113-A of the NI Act. 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 Mohan* [2010 (4) CTC 118], the same has not been done in this case. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by 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.1211 of 2013. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gya

To

1.IV Additional District and Sessions Court
Coimbatore

2. Judicial Magistrate No.I
Pollachi

3.The Deputy Registrar
Criminal Side
High Court, Madras

4.The Assistant Registrar,
Criminal Side,
High Court, Chennai.

CRL.R.C.No.1211 of 2013

bp(co)
nr 06/03/2020

सत्यमेव जयते

WEB COPY