



BAIL SLIP

The Petitioner viz., P.M.Mohankumar, S/o.P.C.Maniraj, be and hereby was directed to be released on Bail as per order of this court, dated 04.10.2013 and made in M.P.No. 1 of 2013 in CrI.RC. 1239 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No.1239 of 2013

P.M.Mohankumar ... Revision Petitioner

Vs.

1.M/s.Alice Blue Commodities Pvt. Ltd.,
Represented by its Director,
M.Sidhavelayutham,
85/2, 3rd Floor, Royal Building,
Sathy Road, Erode,
Represented by his Power Agent,
S.Saravanakumar,
86, Pandian Street,
Bhavani Road, Perundurai,
Erode District.

2.State by
Public Prosecutor, Erode. ... Respondents

Criminal Revision Case filed under Section 397 (1) r/w. 401 Cr.P.C., against the judgment, dated 24.06.2013, passed by the Principal Sessions Judge, Erode, in C.A.No.19 of 2013, confirming the judgment of conviction and sentence, dated 21.03.2013, passed by the Judicial Magistrate (Fast Track Court at Magisterial Level No.I), Erode, in C.C.No.60 of 2012.

For Petitioner : Mr.A.Gokulakrishnan

For R1 : Mrs.V.Suguna

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 24.06.2013, passed by the Principal Sessions Judge, Erode, in C.A.No.19 of 2013, confirming the judgment of conviction and sentence, dated 21.03.2013, passed by the



Judicial Magistrate (Fast Track Court at Magisterial Level No.I), Erode, in C.C.No.60 of 2012.

2.For the sake of convenience, the petitioner and the 1st respondent will be referred to as accused and complainant, respectively.

3.The complainant is a company incorporated under the Companies Act, 1956, and was into the business of commodity trading. The accused was their customer and had traded in commodities, towards which, a sum of Rs.5,54,580.53 was due to the complainant as on 23.05.2011. When the complainant started demanding the payment of the amount, the accused issued a post dated cheque for Rs.5,40,000/- on 25.01.2012 (Ex.P2). The complainant presented the said cheque and it was returned with the endorsement "funds insufficient" on 31.01.2012 vide return memo (Ex.P3). The complainant issued a statutory demand notice dated 17.02.2012 (Ex.P4), which was returned with the postal endorsement "not claimed". Therefore, the complainant initiated a prosecution in C.C.No.60 of 2012 before the Judicial Magistrate (Fast Track Court at Magisterial Level No.I), Erode, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.From the side of the complainant, its Power Agent and Manager, Saravanakumar, was examined as P.W.1 and Exs.P1 to P7 were marked. In the cross-examination, the accused marked a copy of Special Power of Attorney as Ex.D1.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he did not come forward to give any explanation as to the circumstances under which the cheque issued by him came into the hands of the complainant. No witness was examined from the side of the accused.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.03.2013, in C.C.No.60 of 2012, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for six months and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for 30 days.

7.The appeal in C.A.No.19 of 2013 that was filed by the accused was dismissed by the Principal Sessions Judge, Erode, on 24.06.2013.

8.Challenging the concurrent findings of the two Courts below, the accused has filed the present Criminal Revision Case, before this Court, under Section 397 (1) r/w. 401 Cr.P.C.



9. Heard Mr.A.Gokulakrishnan, learned counsel for the revision petitioner/accused and Mrs.V.Suguna, learned counsel for the 1st respondent/complainant.

10. 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 Kuldip 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)

11. Mr.A.Gokulakrishnan submitted that there was no proper service of the statutory demand notice on the accused, inasmuch as the postal cover was returned to the sender by the Postal Department without proper intimation to the accused. This argument has been rightly rejected by the two Courts below in the light of Section 27 of the General Clauses Act, 1897. The record shows that the notice was sent to the address of the accused and when the accused was not available in his residence, intimation was left there and the Postal Department waited for the accused to claim the letter. The cover was returned to the sender, since the accused did not come forward to claim the letter. For this, the complainant cannot be faulted.

12. Mr.A.Gokulakrishnan further submitted that Saravanakumar (P.W.1) does not have the authority to give evidence on behalf of the complainant, as there was no proper Power of Attorney. This argument was also considered by both the Courts below and was rejected. Saravanakumar (P.W.1) was given the Power of Attorney, which has been marked in the trial Court as Ex.P1, even otherwise, Saravanakumar (P.W.1) was working as Manager in the complainant company and was well aware of the transactions in question. He subjected himself to grilling cross-examination by the accused and has given satisfactory answers to the questions, which clearly shows that he was in know of the transactions in question.

13. That apart, the accused has not denied the issuance of the impugned cheque. This Court perused the original cheque (Ex.P2) and did not find any suspicion on the face of it. Superadded, the accused also did not give any



satisfactory explanation when he was questioned under Section 313 Cr.P.C.

14. In *Bir Singh v. Mukes Kumar* [(2019) 4 SCC 197], the Supreme Court has held as follows :

'33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.'

15. In *Uttam Ram Vs. Devinder Singh Hudan & Another* (C.A.No.1545 of 2019 decided on 17.10.2019), 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
' '



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16. Though the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability, as held by the Supreme Court in Rangappa Vs. Sri Mohan [2010 (4) CTC 118], even that has not been done in this case.

17. In fine, this Criminal Revision Case is devoid of merits and stands dismissed and the judgments of the two Courts below are confirmed. The trial Court is directed to secure the accused and commit him to prison to undergo the remaining sentence.

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. It is always open to the parties to file an application before the trial Court under Section 147 of the Negotiable Instruments 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.1239 of 2013.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mkn

Copy to :

1. The Principal Sessions Judge,
Erode.
2. The Judicial Magistrate
(Fast Track Court at Magisterial Level No.I),
Erode.
3. The Deputy Registrar |with a direction to send back the
(Criminal Section), |original records, forthwith, to the
High Court, Madras. |respective Courts below
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Arundattan, Advocate, S.R.No. 9847

Crl. R.C. No.1239 of 2013