

Bail Slip

The Petitioner herein/Accused namely G.Kaluram (in C.C.No.8655 of 2007 on the file of VII Metropolitan Magistrate George Town at Chennai) was directed to be released on bail as per order of this court dated 08.10.2013 and made in M.P.No.1 of 2013 in CrI.R.C.1248 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.1248 of 2013

G.Kaluram ... Revision Petitioner

Vs.

A.Mani ... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 20.08.2013, passed by the VII Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.97 of 2010, confirming the judgment of conviction and sentence, dated 25.05.2010, passed by the VII Metropolitan Magistrate, George Town, Chennai, in C.C.No.8655 of 2007.

For Petitioner : Mr.P.Selvaraj

For Respondent : Mr.D.Jayachandran

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O R D E R

This Criminal Revision Case has been filed against the judgment, dated 20.08.2013, passed by the VII Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.97 of 2010, confirming the judgment of conviction and sentence, dated 25.05.2010, passed by the VII Metropolitan Magistrate, George Town, Chennai, in C.C.No.8655 of 2007.

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, on 01.03.2007, the accused borrowed Rs.60,000/- as hand loan and

issued a cheque dated 13.03.2007 (Ex.P1) for the said amount; the complainant presented the said cheque and it was returned on 16.03.2007 with the endorsement "funds insufficient" vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 30.03.2007 (Ex.P3), for which, the accused issued a reply notice (Ex.P5), denying the very issuance of the cheque and contending that the cheque leaf must have been stolen from his shop, forged, and presented by the complainant; since the accused repudiated the debt, the complainant initiated a prosecution in C.C.No.8655 of 2007, before the VII Metropolitan Magistrate, George Town, Chennai, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.The complainant examined himself as P.W.1 and marked Exs.P1 to P5.

5.When the accused was questioned under Section 313 Cr.P.C., he denied the allegations. The accused examined himself as D.W.1 and stated that he had not borrowed any loan from the complainant and that he had not issued the impugned cheque.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 25.05.2010, in C.C.No.8655 of 2007, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for three months and to pay the cheque amount as compensation to the complainant, in default, to undergo simple imprisonment for one month.

7.The appeal in C.A.No.97 of 2010 that was filed by the accused was dismissed by the VII Additional Sessions Judge, City Civil Court, Chennai, on 20.08.2013.

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 r/w. 401 Cr.P.C.

9.Heard Mr.P.Selvaraj, learned counsel for the revision petitioner/accused and Mr.D.Jayachandran, learned counsel for the 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.P.Selvaraj contended that the cheque was not signed by the accused and that it was misused by the complainant. He further contended that the accused himself is a pawn-broker and therefore, there was no necessity for him to borrow Rs.60,000/- from the complainant.

12.Per contra, learned counsel appearing for the respondent/complainant refuted the said contentions.

13.This Court gave its anxious consideration to the rival submissions.

14.The complainant (P.W.1), in his evidence, has spoken about the loan of Rs.60,000/- given to the accused, the issuance of the impugned cheque, its presentation and dishonour, the issuance of legal notice and receipt of reply notice. In the cross-examination, the complainant (P.W.1) denied the suggestion that he had stolen the cheque leaf from the accused and had presented it illegally.

15.The accused, who examined himself as D.W.1, merely stated that the complainant had stolen the cheque leaf and had forged his signature. Except the ipsi dixit of the accused, there is no material placed before the Court to probabalise the said defence. The impugned cheque was not returned on the ground "signature varies", but on the ground "funds insufficient". In the cross-examination of the accused, he stated that he did not give any police complaint nor did he take any effective step to prosecute the complainant for the alleged theft of the cheque leaf and forgery.

16.The trial Court has had the opportunity to see the demeanor of the complainant (P.W.1) and the accused (D.W.1). Both the Courts have disbelieved the defence set up by the accused. As rightly pointed out by both the Courts below, had the complainant stolen the cheque leaf from the office of the accused and forged his signature, the accused would have taken some action after he came to know about it via the statutory demand notice (Ex.P3), but that was not done by the accused. The accused could have had the cheque sent to an expert for

opinion, through Court, which was also not done by the accused. Thus, the conduct of the accused is indeed strange.

17. 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], except saying that the cheque was stolen and forged, no step was taken by the accused to probabalise this defence. In fine, this Court does not find any infirmity in the findings of facts arrived at by the two Courts below, warranting interference.

18. As a result, this Criminal Revision Case is 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 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 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.1248 of 2013.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

Copy to :

1. The VII Additional Sessions Judge,
City Civil Court,
Chennai.

2. The VII Metropolitan Magistrate,
George Town,
Chennai.

3.The Deputy Registrar |with a direction to send back the
(Criminal Section), |original records, forthwith, to the
High Court, Madras. |respective Courts below

+lcc to Mr.P.Selvaraj, Advocate SR.9935

Crl. R.C. No.1248 of 2013

SV(CO)
CB(11/03/2020)



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