

Bail Slip

The Appellant/Accused, namely S.Omprakash VIZ Properitor of Rohini printers, No.14, Valliammal Street, Erode 638 011 was directed to released on bail as per order dated 10.10.2013 in CRL MP.NO.2/13 IN CrI. R.C. No.1258 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No.1258 of 2013

S.Omprakash ... Revision Petitioner/ Accused

Vs.

D.Venkatesan ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 12.11.2009, passed by the Additional District and Sessions Judge, Fast Track Court No.I, Erode, in C.A.No.299 of 2008, confirming the conviction and sentence in C.C.No.14 of 2006 on the file of the Judicial Magistrate Court No.I, Erode, dated 14.11.2008.

For Petitioner : Mr.M.Guruprasad

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 12.11.2009, passed by the Additional District and Sessions Judge, Fast Track Court No.I, Erode, in C.A.No.299 of 2008, confirming the conviction and sentence in C.C.No.14 of 2006 on the file of the Judicial Magistrate Court No.I, Erode, dated 14.11.2008.

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 availed a hand loan of Rs.75,000/- from the complainant on 01.11.2005, towards which, he (accused) gave two cheques, one dated 27.11.2005 for Rs.45,000/- (Ex.P1) and the other

dated 29.11.2005 for Rs.30,000/- (Ex.P2), both drawn on Karnataka Bank, Erode Branch. The complainant presented the two cheques in Indian Bank, Erode Branch, on 30.11.2005, and both the cheques were dishonoured for insufficiency of funds, vide return memos dated 31.11.2005 (Exs.P3 and P4). The complainant issued a statutory demand notice dated 13.12.2005 (Ex.P6), for which, the accused gave a reply, dated 22.12.2005 (Ex.P9), repudiating the debt. Therefore, the complainant initiated a prosecution in C.C.No.14 of 2006 in the Court of Judicial Magistrate No.I, Erode, 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 P9. No witness was examined nor any document marked from the side of the accused.

5.In the reply notice (Ex.P9), the accused had taken a defence that he had not borrowed any money from the complainant; he had financial transactions with one Mahaveer Jain; he gave two cheques, one dated 27.01.2005 for Rs.45,000/- and the other dated 29.01.2005 for Rs.30,000/- to Mahaveer Jain; since Mahaveer Jain demanded exorbitant interest, he lodged a police complaint; during police enquiry, he discharged the loan of Mahaveer Jain, but did not get back the two cheques; Mahaveer Jain had handed over the two cheques to the complainant; the date of the two cheques were 27.01.2005 and 29.01.2005, respectively, but the complainant had added a "1" and had made them into "27.11.2005" and "29.11.2005".

6.Therefore, the accused filed a petition in CrI.M.P.No.2578 of 2006 in C.C.No.14 of 2006 under Section 45 of the Evidence Act to send the two impugned cheques to the Tamil Nadu Forensic Sciences Laboratory in order to find out whether there was any tampering in the dates. This petition was allowed by the trial Court on 09.06.2007 and the two cheques were sent to the Tamil Nadu Forensic Sciences Laboratory. After examining them, the Laboratory has given a report, dated 11.12.2007, stating that it is not possible to offer any reliable opinion on this aspect.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 14.11.2008, in C.C.No.14 of 2006, convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for one year and pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for one month.

8.The appeal in C.A.No.299 of 2008 that was filed by the accused was dismissed by the Additional District and

Sessions Judge, Fast Track Court No.I, Erode, on 12.11.2009.

9.Challenging the concurrent findings of the two Courts below, the accused filed the present Criminal Revision Case, under Section 397 r/w. 401 Cr.P.C., before this Court, with a delay of 294 days, to condone which, he filed Crl.M.P.No.1 of 2011 under Section 5 of the Limitation Act, 1963. This Court condoned the delay on 04.10.2013 and directed the Registry to number the revision case.

10.This Criminal Revision Case was admitted in the year 2013 and till date, notice has not been served on the respondent/complainant. Therefore, this Court heard the learned counsel for the petitioner/accused. In a revision case, it is necessary to hear the respondent only when the Court proposes to pass orders prejudicial to him.

11.Learned counsel for the petitioner/accused submitted that, both the Courts have erred in convicting the accused by ignoring the defence taken by the accused. The learned counsel also contended that the complainant did not file any document to show that Rs.75,000/- was given as loan to the accused.

12.This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner/accused.

13.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)

14.This Court carefully perused the evidence of the complainant, who examined himself as P.W.1. The complainant (P.W.1) has clearly stated that he knows the accused for more than five years; the accused borrowed Rs.75,000/- on 01.11.2005 and gave two cheques, one dated 27.11.2005 for Rs.45,000/- (Ex.P1) and the other dated 29.11.2005 for Rs.30,000/- (Ex.P2); both the cheques were

dishonoured for insufficiency of funds; he had issued a statutory demand notice, for which, the accused had sent a reply. In the cross-examination, the accused was not able to make any serious dent, except suggesting that the impugned cheques were given to one Mahaveer Jain and that the complainant had tampered the dates in them, which suggestions, the complainant denied.

15. Even in the statement under Section 313 Cr.P.C., the accused has not explained the circumstances, under which, the two cheques were issued. This Court perused the original cheques, viz., Exs.P1 and P2, and did not find any suspicious features in them, probalising the defence theory. The loan amount in this case is only Rs.75,000/- and the failure of the complainant to obtain a promissory note or any other document from the accused at that time of giving the loan cannot be said to be fatal. The two cheques carry with them, the presumptions under Sections 118 and 139 of the Negotiable Instruments Act. The accused has not denied the writings or signature in the two cheques, but has only disputed the dates in them. Had the said Mahaveer Jain retained the impugned cheques improperly even after the accused had discharged the loan, the accused would have given directions to his Bank to stop payment, but that has not been done by him. 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.

16. In fine, this Criminal Revision Case is devoid of merits and hence, stands dismissed. 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.1258 of 2013.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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Copy to :

- 1.The Additional District and Sessions Judge,
Fast Track Court No.I,
Erode.
2. Do thro the Chief Judicial Magistrate, Erode.
- 3.The Judicial Magistrate Court 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
5. The Assistant Registrar(Criminal Side)
High Court,Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court,Madras

+1cc to Mr.M.Guruprasad , Advocate SR.No. 5589

Cr1. R.C. No.1258 of 2013

A.SK(20/02/2020)



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