

BAIL SLIP

The Appellants/Accused namely K.Jawahar, S/o.Krishnasamy (P2), C.Krishnasamy (P3), J.Jaisri, W/o.Jawahar (P4) were released on bail vide order dated 09/10/2013 in CrI.M.P.No. 1/2013 in CrI.R.C.No.1261/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2020
PRONOUNCED ON : 18.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1261 of 2013

1.M/s.Amaravathi Packaging Industries
Rep. by its Managing Partner K.Jawahar
S.F.No.75, Bodipatti Post, Udumalpet

2.K.Jawahar
Managing Partner of M/s.Amaravathi Packaging Industries
No.27, Sairam Layout
D.V.Pattinam, Udumalpet

3.C.Krishnasamy
Partner of M/s.Amaravathi Packaging Industries
No.27, Sairam Layout
D.V.Pattinam, Udumalpet

4.J.Jaisri
Partner of M/s.Amaravathi Packaging Industries
No.27, Sairam Layout
D.V.Pattinam, Udumalpet .. Petitioners/Appellant/
Accused

Vs

Shanmughasundaram .. Respondent/Respondent/
Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the conviction and sentence passed by the V Additional District and Sessions Judge, Coimbatore in C.C.No.299 of 2012 dated 22.08.2013 and confirmed by the judgment and decree of the Judicial Magistrate No.I, Pollachi in C.C.No.162 of 2005 dated 01.10.2012.

For Petitioners : Mr.N.Umapathi
For Respondent : Mr.N.Manokaran
for M.N.Balakrishnan

O R D E R

For the sake of convenience, the petitioners and the respondent will be referred to as the accused and complainant respectively.

2.It is the case of the complainant that, Jawahar (A2) was his family friend and that, he was the Managing Partner in Amaravathi Packaging Industries (A1), wherein, his (A1's) parents Krishnasamy (A3) and Sulochana (A4) and his wife Jaisri (A5) were the other partners; they borrowed Rs.4,00,000/- on 13.12.2001 for their business and executed some loan documents; when the complainant demanded repayment of the amount, a cheque dated 14.03.2002 (Ex.P1) drawn on the account of M/s.Amaravathi Packaging Industries (A1) with Bank of Madura, Udumalpet Branch, signed by Jawahar (A2), as Managing Partner was issued; the complainant presented the said cheque on 16.03.2002 in Canara Bank, Madathukulam Branch, where he was having his account, but the cheque was returned unpaid with the endorsement "insufficiency of funds" on 18.03.2002 vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 26.03.2002 (Ex.P3) to all the accused and they received it on 28.03.2002 vide postal acknowledgment card (Ex.P4); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.162 of 2005 in the Court of the Judicial Magistrate No.I, Pollachi under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

3.On appearance, the accused were questioned under Section 251 Cr.P.C. and they denied the accusation.

4.To prove the case, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P6. He also examined one S.P.Palaniappan, Assistant Manager, ICICI Bank as P.W.2 and marked the statement of accounts of Amaravathi Packaging Industries (A1) to prove the dishonour of the cheque. It may be necessary to state here that Bank of Madura Limited was taken over by ICICI Bank Limited and that, necessitated the examination of the Assistant Manager of ICICI Bank to prove the dishonour of the cheque.

5.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the allegations and did not come forward to explain the circumstance under which, the impugned cheque came into the hands of the complainant. From the side of the accused, one Balagurusamy was examined as D.W.1.

6.During trial, Sulochana (A4) died. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 01.10.2012 in C.C.No.162 of 2005, convicted Jawahar (A2), Krishnasamy (A3) and Jaisri (A5) and sentenced them to undergo one year simple imprisonment and

pay compensation of Rs.4,00,000/-, either jointly or severally, to the complainant within a month, in default to undergo two months simple imprisonment. The appeal in C.A.No.299 of 2012 that was filed by the accused was dismissed by the V Additional District and Sessions Court, Coimbatore on 22.08.2013. Challenging the concurrent findings of the two Courts below, the accused have filed the present criminal revision under Section 397 read with 401 Cr.P.C.

7.During the pendency of this revision petition, Krishnasamy (A3) died.

8.Heard Mr.N.Umapathi, learned counsel appearing for the accused and Mr.N.Manokaran, learned counsel representing Mr.M.N.Balakrishnan, learned counsel on record for the complainant.

9.Before advertng to the rival submissions, it may be necessary to state here 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)

10.Mr.Umapathi, learned counsel for the accused submitted that the complainant has not proved that he had the means to give the loan and when the complainant has admitted that he is not an income tax assessee, his assertion that he gave the loan of Rs.4,00,000/- sounds improbable. Learned counsel placed strong reliance on the judgment of the Supreme Court in Rangappa Vs Sri Mohan [2010 (4) CTC 118] and contended that the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability and that, in this case, the accused has done that.

11.Per contra, Mr.Manokaran, learned counsel for the complainant refuted the contentions.

12.In this case, the complainant examined himself as P.W.1 and has spoken about the circumstance under which, the loan of Rs.4,00,000/- was given to the accused, the issuance

of the impugned cheque for Rs.4,00,000/- by the accused, its presentation and dishonour, issuance of statutory demand notice and the failure of the accused to comply with the demand. It may be relevant to state here that the accused has not replied to the statutory demand notice.

13.Mr.Umapathi contended that failure of the accused to reply to the demand notice cannot be held against him. It is true that, just because the accused had failed to reply to the demand notice, the Court cannot jump to the conclusion that he has admitted the allegations. However, the failure to reply to the demand notice is one circumstance, which should be viewed along with the other incriminating circumstance against the accused. The accused has not denied his signature in the cheque.

14.This Court perused the impugned cheque and found that it bears the rubber stamp of Amaravathi Packaging Industries (A1) and it has been signed by Jawahar (A2). Thus, it is not an individual's cheque, but the cheque of a corporate entity. When the accused were examined under Section 313 Cr.P.C., they did not come forward with any explanation as to the circumstance under which, the impugned cheque went into the hands of the complainant. However, the accused examined one Balagurusamy as D.W.1. From the questions put to the complainant (P.W.1) in cross-examination and from the evidence of Balagurusamy (D.W.1), this Court is able to deduce the defence that was taken by the accused.

15.Mr.Umapathi contended that one Radhakrishnan had filed a complaint against the accused in the consumer Court in Dindigul, in which, the accused engaged one Rajendran as his advocate. The litigation in the consumer Court ended in a compromise and at the time of entering into the compromise, the accused gave the impugned cheque to his advocate Rajendran. On account of some dispute between the accused and his advocate Rajendran, the cheque that was given to the latter found its way to the complainant, since the complainant was a relative of Rajendran.

16.Both the Courts below have rejected this defence theory. Except suggesting the defence theory and examining Balagurusamy (D.W.1), the accused has not placed any credible material to show, what was the complaint that was filed by Radhakrishnan against him, what was the compromise entered into between them, when was the impugned cheque given to Rajendran etc. All these aspects have been thoroughly gone into by the trial Court and the appellate Court and the defence theory has been rejected.

17.This Court does not find any good reason to disagree with the findings of fact arrived at by the two Courts below. As stated above, the revisional Court cannot act as a second appellate authority as a matter of routine. This Court perused the original cheque (Ex.P1) and did not

find any suspicious feature in that. Now coming to the question of vicarious liability, this Court finds that the impugned cheque has been signed by Jawahar (A2) in his capacity as Managing Partner of Amaravathi Packaging Industries (A1) and therefore, Jawahar (A2) is liable to be convicted under Section 138 of the NI Act with the aid of Section 141 of the NI Act. However, the complainant has not adduced satisfactory evidence to show that Jawahar's (A2's) wife Jaisri (A5) was actively involved in the affairs of Amaravathi Packaging Industries (A1). In the absence of sufficient material on this score, the conviction of Jaisri (A5) deserves to be set aside.

18. In the result, this Criminal Revision is partly allowed. Jaisri (A5) is acquitted of the charge. The conviction and sentence imposed on Jawahar (A2) by the trial Court as confirmed by the appellate Court is upheld. The trial Court is directed to secure Jawahar (A2) for undergoing 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.1261 of 2013. Registry is directed to transmit the original records to the respective Courts forthwith.

19. Before parting, this Court places on record its appreciation to the trial Judge Mr.K.Lingam, B.Sc., M.L., for devoting a paragraph in the judgment in which, he has tracked the trajectory of the case from the time of filing of the complaint to its culmination.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

gya

To

1. The V Additional District and Sessions Court
Coimbatore

2. The Judicial Magistrate Court No.I
Pollachi

3.The Chief Judicial Magistrate,
Coimbatore.

4.The Deputy Registrar
Criminal Side
High Court, Madras.

+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.13944
+1cc to Mr.N.Umapathi, Advocate, S.R.No. 13458

CRL.R.C.No.1261 of 2013

PVS (CO)
GN(16/03/2020)



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