

BAIL SLIP

The Appellant/Accused was namely Sevaraj, S/o.T.Subramaniam, (in C.C.No. 42 of 2005 dated 13/11/2007 on the file of the Judicial Magistrate No.V, Coimbatore confirmed in C.A.No. 528 of 2007 dated 23/07/2013 on the file of IV Additional District and Sessions Judge, Coimbatore) was released on bail as per the order of this Court dated 11.10.2013 and made in MP.No. 1/2013 in CrI.Rc.No. 1285 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1285 of 2013

S.Selvaraj ...Petitioner/Appellant/Accused
Vs.

M.Arumugam ... Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 13.11.2007 passed in C.C.No.42 of 2005 on the file of the Judicial Magistrate Court No.V, Coimbatore, confirmed by the judgment and order dated 23.07.2013 passed in C.A.No.528 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.C.Veeraraghavan

For Respondent : Mr.K.Mohanraj

WEB COPY
O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 13.11.2007 passed in C.C.No.42 of 2005 on the file of the Judicial Magistrate Court No.V, Coimbatore, confirmed by the judgment and order dated 23.07.2013 passed in C.A.No.528 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore.

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 borrowed a sum of Rs.1,00,000/- on 12.01.2004 along with his wife Devi Lakshmi, who jointly executed a promissory note (Ex-P1) agreeing to repay the amount with interest of 18% per annum; since the accused did not pay any interest, the complainant negotiated with him and agreed to waive the interest component and accept the principal amount as full and final settlement; in discharge of the debt, the accused issued a cheque (Ex-P2) dated 15.10.2004 for a sum of Rs.1,00,000/-; the complainant presented the said cheque (Ex-P2) on 19.10.2004 and it was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P3) dated 20.10.2004; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 27.10.2004 and the accused sent a reply notice (Ex-P7) dated 09.11.2004 disputing the liability; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.42 of 2005 before the Judicial Magistrate No.V, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

4. Before the trial Court, the complainant examined himself as PW1 and marked eight exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he merely denied the allegations and did not offer any explanation as to the circumstances, under which, the cheque (Ex-P2) issued by him came into the hands of the complainant. Before the trial Court, the accused examined himself as DW1, but did not mark any exhibit.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 13.11.2007 in C.C.No.42 of 2005, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.3,000/-, in default to undergo two months simple imprisonment.

7. The appeal in C.A.No.528 of 2007 filed by the accused was allowed by the IV Additional District and Sessions Court, Coimbatore, on 13.11.2007.

8. Challenging the order of the appellate Court, the complainant filed C.A.No.410 of 2008, which was allowed by this Court on 17.02.2011. However, this Court remanded the matter to the appellate Court with liberty to the accused to examine one Krishnamoorthy as DW2. Accordingly, on remand, Krishnamoorthy

was examined from the side of the accused as DW2.

9. After considering the evidence on record and hearing side, the appellate Court, by judgment and order dated 23.07.2013, dismissed the appeal and confirmed the conviction and sentence of passed by the trial Court.

10. Aggrieved by the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

11. Heard Mr.C.Veeraraghavan, learned counsel for the accused and Mr.K.Mohanraj, learned counsel for the complainant.

12. Before advertng to the rival submissions, it is 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.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², 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)

13. In the case at hand, the complainant, in his evidence, has spoken to about the loan taken by the accused, execution of the promissory note (Ex-P1), issuance of the impugned cheque (Ex-P2) for Rs.1,00,000/-, its presentation and dishonour, issuance of the statutory demand notice (Ex-P4), receipt of the reply notice (Ex-P7) and the failure of the accused to comply with the demand.

14. The accused, who examined himself as DW1, in his evidence as well in the reply notice (Ex-P7), has stated that he approached the complainant for loan of Rs.20,000/-; the complainant wanted someone to be a guarantee; therefore, the accused brought Krishnamoorthy (DW2) to stand guarantee; however, Krishnamoorthy (DW2) did not sign the documents that were sought by the complainant and instead, gave Rs.20,000/- as interest free loan to the complainant, which the complainant, in turn gave to the accused and obtained the promissory note (Ex-

1(2004) 7 SCC 659

2(2019) 4 SCC 197

P1) and the impugned cheque (Ex-P2); the accused settled the loan amount, despite which, the complainant refused to return the promissory note (Ex-P1) and the impugned cheque (Ex-P2).

15. On the contrary, Krishnamoorthy (DW2), in his evidence, has stated a different story. He has stated that he gave a loan of Rs.20,000/- to the accused, for which, the complainant issued a cheque.

16. 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 Mohan³, in this case, the additional evidence adduced by the accused before the appellate Court has cut into the root of the defence taken by him in the trial Court.

17. The fact remains that the accused had executed the promissory note (Ex-P1) for Rs.1,00,000/- in favour of the complainant, in which, his wife had also signed. A perusal of the impugned cheque (Ex-P2) shows no suspicious features.

As a result, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, *ibid.*, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1285 of 2013. 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.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.V,
Coimbatore.

3(2010) 11 SCC 441

2. The IV Additional District and
Sessions Judge,
Coimbatore.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return the
original records to the Courts
below concerned

Copy To

The Assistant Registrar (Criminal Section),
High Court, Madras.

+1cc to Mr.C.Veeraraghavan, Advocate, S.R.No. 5761
+1cc to Mr.K.Mohan Raj, Advocate, S.R.No. 5508

Crl.R.C.No.1285 of 2013

VG II(CO)
GN(16/03/2020)



WEB COPY