BAIL SLIP

K.S.Chelladurai S/o.Sowrimuthu the petitioner herein was directed to be released on bail by order dated 11.11.2013 in MP.No.1 of 2013 in Crl.RC.1397/13

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1397 of 2013

K.S.Chelladurai .. Petitioner/Appellant/ Accused

Vs.

Y.Ravi .. Respondent/Respondent/ Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 27.06.2012 passed in S.T.C.No.2 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode, confirmed by the judgment and order dated 13.08.2013 passed in C.A.No.13 of 2013 on the file of the Principal Sessions Court, Erode.

For Petitioner : Mr.P.Hari Babu

For Respondent : Ms.M.Sudha

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 27.06.2012 passed in S.T.C.No.2 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode, confirmed by the judgment and order dated 13.08.2013 passed in C.A.No.13 of 2013 on the file of the Principal Sessions Court, Erode.

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.7,00,000/- and gave a post-dated cheque dated (Ex-P1) 02.11.2011 drawn on Lakshmi Vilas Bank, Erode Branch; the complainant presented the impugned cheque (Ex-P1) on 02.11.2011 and it was returned unpaid with the endorsement "Account Closed" vide bank's return memo (Ex-P2) dated 03.11.2011; therefore, the complainant issued a statutory demand notice (Ex-P3) dated 12.11.2011, for which, the accused issued a reply notice (Ex-P5) dated 23.11.2011; since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.2 of 2012 before the Judicial Magistrate (Fast Track Court No.I), Erode, 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 five exhibits.

5. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same and did not give any explanation as to the circumstances, under which the impugned cheque (Ex-P1) issued by him came into the hands of the complainant. On behalf of the accused, no witness was examined nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.06.2012 in S.T.C.No.2 of 2012, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to three months simple imprisonment and to pay a fine of Rs.3,000/-, in default to undergo fifteen days simple imprisonment.

7. The appeal in C.A.No.13 of 2013 filed by the accused was dismissed by the Principal Sessions Court, Erode, on 13.08.2013.

8. 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.

9. Heard Mr.P.Hari Babu, learned counsel for the accused and Ms.M.Sudha, learned counsel for the complainant.

10. Before adverting 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 Kumar[2], 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. In the case at hand, the complainant, in his evidence, has stated about the loan of Rs.7,00,000/- that was taken by the accused, issuance of the impugned cheque (Ex-P1), its presentation and dishonour, issuance of the statutory demand notice (Ex-P3), receipt of the reply notice (Ex-P5) and the failure of the accused to comply with the demand. The defence was not able to make any serious dent in the testimony of the complainant in the cross-examination.

12. The learned counsel for the accused contended that the accused has sent a reply notice (Ex-P5) setting out his defence and denying the liability.

13. In the reply notice (Ex-P5), the accused has merely stated that he had not borrowed any amount from the complainant and he had not issued any cheque (Ex-P1) and he would give a detailed reply notice, only if a copy of the cheque (Ex-P1) is furnished to him.

14. Except suggesting to the complainant that the cheque (Ex-P1) was not issued towards any liability, the accused had not placed any material in support of his defence. The accused has not denied his signature in the impugned cheque (Ex-P1).

15. 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 Mohan[3], even that has not been done in this case.

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1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

16. Recently, in Uttam Ram Vs. Devinder Singh Hudan & Another[4], 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 he 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.
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> 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."

17. In view of the foregoing discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed. 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.1397 of 2013. If any amount has been deposited by the accused either in the appellate Court or in the

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3 (2010) 11 SCC 441

4 Crl.A.No.1545 of 2019 decided on 17.10.2019

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/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

nsd

To

1. The Judicial Magistrate,
(Fast Track Court No.I),
Erode.

2. The Principal Sessions Judge,
Erode.

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

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

+1 cc to Mr.P.Hari Babu Advocate sr10574
+1 cc to Mr.R.Arundathan Advocate sr9846

Crl.R.C.No.1397 of 2013

pa(co)
aa10/03/2020