

BAIL SLIP

The Appellant/Accused namely K.Kesavan, S/o.Kailasam was released on bail vide order dated 20.11.2013 in CrI.Mp.No. 1/2013 in CrI.R.C.No.1428/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No.1428 of 2013

K.Kesavan ... Revision Petitioner/Appellant/
Accused

Vs.

Savariyar ... Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 25.10.2013, passed by the District and Sessions Judge, Tiruvarur, in C.A.No.32 of 2010, confirming the judgment of conviction and sentence, dated 30.07.2010, passed by the Judicial Magistrate No.I, Mannargudi, in C.C.No.319 of 2006.

For Petitioner : Mr.Swami Subramanian

For Respondent : Mr.G.Vinodh Kumar

सत्यमेव जयते
O R D E R

This Criminal Revision Case has been filed against the judgment, dated 25.10.2013, passed by the District and Sessions Judge, Tiruvarur, in C.A.No.32 of 2010, confirming the judgment of conviction and sentence, dated 30.07.2010, passed by the Judicial Magistrate No.I, Mannargudi, in C.C.No.319 of 2006.

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 had availed a hand loan of Rs.60,000/- from him and towards the

loan, the accused issued a cheque dated 30.03.2006 (Ex.P1) for the said amount, drawn on ICICI Bank, Mannargudi Branch; the complainant presented the said cheque for clearance on 29.06.2006 in the Indian Overseas Bank, Mannargudi Branch, where, he (complainant) was maintaining his account, and it was returned unpaid with the endorsement "funds insufficient" vide Bank return memo (Ex.P2); the complainant issued a statutory demand notice dated 05.07.2006 (Ex.P3) to the accused, for which, the accused issued a reply notice dated 18.07.2006 (Ex.P5), repudiating the debt; therefore, the complainant initiated a prosecution in C.C.No.319 of 2006 before the Court of Judicial Magistrate No.I, Mannargudi, 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. on the incriminating circumstances appearing against him, he denied the same. The accused examined Alagappan, Branch Manager, ICICI Bank, Mannargudi Branch, where he was having his account, as D.W.1. He also examined one Kirubanandham, Manager, Indian Overseas Bank, Mannargudi Branch, where the complainant was having his account. Thereafter, he examined himself as D.W.3. From the side of the accused, Exs.D1 to D4 were marked.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.07.2010, in C.C.No.319 of 2006, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for six months and a fine of Rs.3,000/-, in default, to undergo simple imprisonment for one month.

7.The appeal in C.A.No.32 of 2010 that was filed by the accused was dismissed by the District and Sessions Judge, Tiruvarur, on 25.10.2013.

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.Swami Subramanian, learned counsel for the accused and Mr.G.Vinodh Kumar, learned counsel for the 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 Kuldeep 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.Swami Subramanian, learned counsel for the accused, submitted that the accused has discharged the burden under Section 139 of the Negotiable Instruments Act by examining himself as a defence witness and proved the circumstances under which the impugned cheque (Ex.P1) came into the possession of the complainant. He further contended that the accused has not signed the impugned cheque (Ex.P1) and it was forged by the complainant.

12.Per contra, Mr.G.Vinodh Kumar, learned counsel for the complainant, refuted the contentions.

13.The complainant (P.W.1), in his evidence, has stated about the loan of Rs.60,000/- that was given to the accused, issuance of the impugned cheque, its presentation and dishonour, issuance of statutory demand notice, receipt of reply notice, and failure of the accused to comply with the demand.

14.The accused, in his reply notice dated 18.07.2006 (Ex.P5), has stated that, he himself is a money lender; he had borrowed Rs.15,000/- from the complainant in the year 2002 and had returned the amount with exorbitant interest to the complainant; he is maintaining his account with ICICI Bank Mannargudi Branch; his little daughter had torn some cheque leaves; he had kept some unsigned cheque leaves in the dashboard of his van which met with an accident on 11.05.2006 and the complainant should have either used the torn cheque leaf or the one stolen from the van after the accident, forged his signature, presented it for clearance, and on its dishonour, has initiated a vexatious prosecution.

15.This Court perused the impugned cheque (Ex.P1) and found that it is torn and cellophane tape has been used to hold it firm. The cheque (Ex.P1) bears the date 30.03.2006. It was presented by the complainant on 29.06.2006. It was not

dishonoured on the ground that the signature varies or the instrument is mutilated, but on the ground of insufficiency of funds.

16. In the cross-examination, the complainant (P.W.1) has clearly stated that, when he started demanding money, the accused gave him the impugned cheque (Ex.P1) and told him that, though the cheque leaf has been stuck with a cellotape, he (accused) will ensure that the same is cleared, if it is presented two months later. Believing the representation and somehow wanting to get back his money, the complainant accepted the cheque (Ex.P1) and presented it only on 29.06.2006 as stated above.

17. The accused (D.W.3), in his evidence, has stated that, he had borrowed Rs.15,000/- from the complainant in the year 2002 and had returned the amount with interest; his daughter had torn some cheque leaves, one of which had gone into the hands of the relative of the complainant, from whom, it went into the hands of the complainant. In the cross-examination, the accused (D.W.3) has stated that, apart from the torn cheque leaves, he had not kept any other cheque leaf in the dashboard of his van which met with the accident on 11.05.2006 and that he had wrongly stated so in his reply notice (Ex.P5).

18. The accused filed a petition in the trial Court to send the impugned cheque (Ex.P1) along with his admitted signatures to the Handwriting Expert in the Tamil Nadu Forensic Science Department for opinion and that petition was allowed by the trial Court. The impugned cheque (Ex.P1) was sent along with the admitted signatures of the accused available in the Court records, viz., his signature at the time of receiving copy of the complaint, signature put by him when he was questioned under Section 251 Cr.P.C., his signature in the answers to the questions under Section 313 Cr.P.C., his signature in the postal Acknowledgment Card (Ex.P4), and his signature available in the Driving Licence. The documents were examined and a report was sent to the trial Court by the Forensic Science Department, which, for the reasons best known to the accused, was not marked. However, the trial Court has made a cursory examination of the signatures of the accused available in the Court records under Section 73 of the Evidence Act and has observed that the accused is in the habit of signing differently at different places.

19. Both the Courts have disbelieved the defence taken by the accused that his small daughter had torn some cheque leaves and one of such torn cheque leaves had gone into the hands of the complainant through a relative and the present prosecution has been filed. The accused has not stated the date on which

his daughter tore the cheque leaves. The reply notice in this case (Ex.P5) was issued by the accused on 18.07.2006. Since the accused knew that he had given a torn but glued cheque leaf to the complainant towards the loan availed by him, he took a specious defence in the reply notice (Ex.P5) that his child had torn the cheque leaves and such a torn cheque leaf had gone into the hands of the complainant. There is a ring of truth in the testimony of the complainant (P.W.1) inasmuch as he has clearly stated that, he was anxious to get back his money from the accused and that the accused gave him a torn cheque saying that he (accused) will ensure that it is cleared if it is presented two months later and that is why he accepted it and presented it two months later.

20. 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], the false defence taken by the accused perforce strengthens the case of the complainant. In fine, this Court does not find any infirmity in the findings of fact arrived at by the two Courts below, warranting interference.

21. 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.1428 of 2013.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

mkn

Copy to :

1.The District and Sessions Judge,
Tiruvavur.

2.The Judicial Magistrate No.I,
Mannargudi.

3.The Chief Judicial Magistrate,
Thiruvavur.

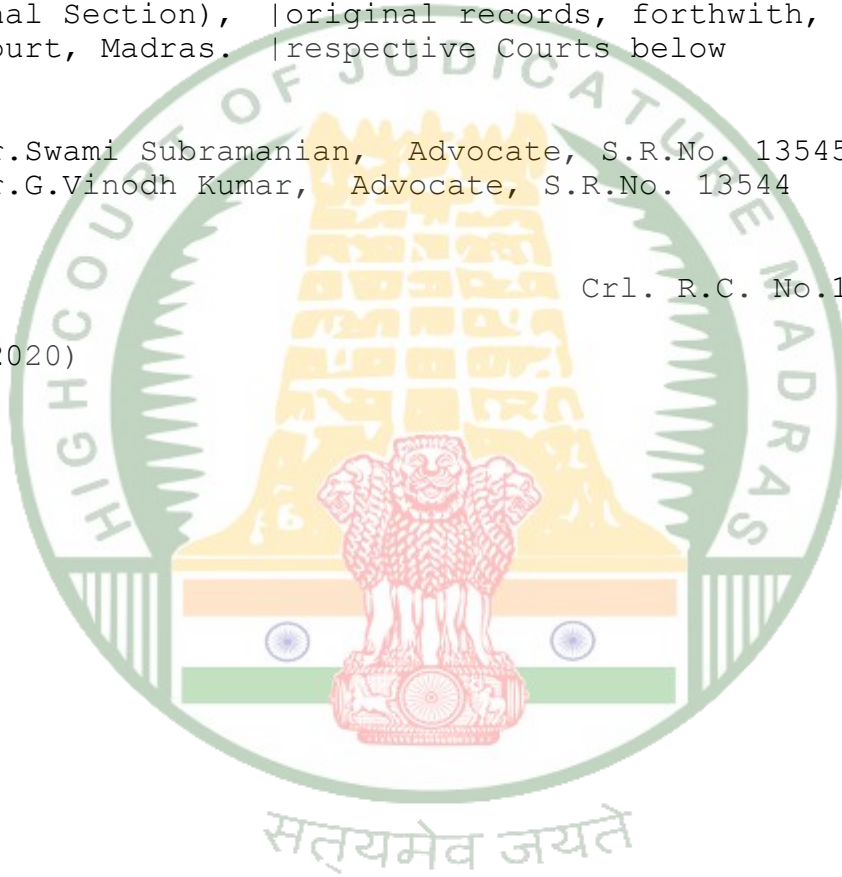
3.The Deputy Registrar |with a direction to send back the
(Criminal Section), |original records, forthwith, to the
High Court, Madras. |respective Courts below

+lcc to Mr.Swami Subramanian, Advocate, S.R.No. 13545

+lcc to Mr.G.Vinodh Kumar, Advocate, S.R.No. 13544

Cr1. R.C. No.1428 of 2013

PVS (CO)
GN(17/03/2020)



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