BAIL SLIP

Petitioner herein/Accused namely N.Kalyanasundaram, S/o.V.R.Natesamudaliar was directed to be released on bail as per the order of this court made in MP.No.1/13 in Crl.RC.No.1432/13 dated 22/11/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1432 of 2013

N.Kalyanasundaram .. Petitioner/Appellant/Accused

Vs.

M/s.V.P.K.Films,
By its Proprietor V.P.Kothandan,
S/o.A.Pachaiyappan,
No.9, Thennamaram Street,
Vellore - 632 001. .. Respondent/Respondent/
Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., to set aside the judgment and order dated 28.03.2012 passed in C.C.No.22 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court - Magisterial Level), Vellore, confirmed by the judgment and order dated 06.06.2013 passed in C.A.No.74 of 2012 on the file of the I Additional District and Sessions Court, Vellore.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.C.Prabakaran

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 28.03.2012 passed in C.C.No.22 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court - Magisterial Level), Vellore, confirmed by the judgment and order dated 06.06.2013 passed in C.A.No.74 of 2012 on the file of the I Additional District and Sessions Court, Vellore.

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 on 11.04.2007, the accused borrowed a sum of Rs.4,00,000/- and executed a promissory note (Ex-P1) agreeing to repay the same with interest at the rate of 24% per annum, on demand; when the complainant started demanding repayment of the amount, the accused issued a cheque (Ex-P2) bearing no.453986 dated 09.07.2007 for a sum of Rs.4,00,000/- drawn on Punjab National Bank, Vellore; the complainant presented the said cheque (Ex-P2) on 09.07.2007 and the same was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P3); therefore, the complainant issued a statutory demand notice (Ex-P4) dated 14.07.2007, which was not received by the accused and the unclaimed cover (Ex-P5) returned with the endorsement "Intimation given on 16.07.2007 and not claimed till 28.07.2007"; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.22 of 2011 before the Judicial Magistrate Court (Fast Track Court – Magisterial Level), Vellore, 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, Selvaraj, Assistant Manager, State Bank of Mysore, where, he was having his account, as PW2 and Kumaresan, a scribe of the promissory note (Ex-P1), as PW3 and marked eight 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 cheque (Ex-P2) issued by him came into the hands of the complainant. From the side 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 28.03.2012 in C.C.No.22 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.74 of 2012 filed by the accused was dismissed by the I Additional District and Sessions Court, Vellore, on 06.06.2013.

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.V.D.Sudakar, learned counsel for the complainant and Mr.C.Prabakaran, 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]]. 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. The learned counsel for the accused submitted that the complainant has not proved the debt, inasmuch as, Kumaresan (PW3), the scribe of the promissory note (Ex-P1), has not even stated the date and time, on which, the loan of Rs.4,00,000/- was given to the accused. He also submitted that the statutory demand notice (Ex-P4) was not properly served on the accused.

1 (2004) 7 SCC 659

2 (2019) 4 SCC 197

12. Per contra, the learned counsel for the complainant refuted the submissions made by the learned counsel for the accused.

13. This Court gave its anxious consideration to the rival submissions.

14. The complainant examined himself as PW1 and has testified about the loan of Rs.4,00,000/- that was given to the accused on 11.04.2007, the execution of the promissory note (Ex-P1) on the same day, the issuance of the impugned cheque (Ex-P2) for Rs.4,00,000/-, its presentation and dishonour, the issuance of the statutory demand notice (Ex-P4) and the return of the same to the sender, on the ground that, despite intimation, the sendee did not collect it.

15. As stated in paragraph no.5, when the accused was questioned under Section 313 Cr.P.C., he has not stated anything with regard to the circumstances, under which, the cheque (Ex-P2) issued by him came into the hands of the complainant.

16. In the cross-examination of the complainant (PW1) and Kumaresan (PW3), the accused has not denied his signature in the impugned cheque (Ex-P2).

17. This Court perused the impugned cheque (Ex-P2) and did not find any suspicious feature thereon.

18. The complainant has marked statement of accounts submitted to the Income Tax Department, as Exs-P6 to P8, to show that he had the means to give a loan of Rs.4,00,000/- to the accused. Just because Kumaresan (PW3) had not stated the date, on which, the loan was given, the evidence of the complainant (PW1) that the loan was given on 11.04.2007 in his residence, cannot be rejected.

19. As regards the non-service of the statutory demand notice (Ex-P4), the trial Court has rightly held that the law casts a duty on the complainant to send a statutory demand notice to the accused and the failure of the accused to receive the same will not be fatal to the case of the complainant. The principle of deemed service of notice can be invoked in this case, inasmuch as, the complainant has placed on record a copy of the statutory demand notice (Ex-P4) and the unclaimed postal cover (Ex-

P5) before the Court.

20. 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.

21. 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."

22. 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.

Resultantly, 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

3 (2010) 11 SCC 441
4 Crl.A.No.1545 of 2019 decided on 17.10.2019

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.1432 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.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

nsd
To
1.The Chief Judicial Magistrate Vellore

2. The Judicial Magistrate,
(Fast Track Court - Magisterial Level),
Vellore

3. The I Additional District
and Sessions Court, Vellore.

4. The Deputy Registrar, with a direction to return the
(Crl.Side) original records to the Courts
Madras High Court, below concerned
Chennai - 104.

+1 cc to Mr.C.Prabakaran Advocate sr15768

Crl.R.C.No.1432 of 2013

bs(co)
aa13/05/2020