

BAIL SLIP

The Petitioner / Accused Viz, Balamayivaganan, S/o.Balasubramanian be and hereby was directed to be released on bail as per order of this Court, dated 22/11/2013 and made in M.P.No.1 of 2013 in CrI.R.C.No.1437 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1437 of 2013

Balamayilvaganan ...Petitioner/Accused

Vs

Lickmichand ... Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 28.10.2013 passed by the District and Sessions Judge, Tiruvarur in C.A.No.10 of 2011 confirming the judgment and order dated 31.03.2011 passed by the Judicial Magistrate No.I, Mannargudi in C.C.No.1394 of 1998.

For Petitioner : Ms.S.T.P.Kuilmozhi

For Respondent : Mr.Swami Subramanian

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 28.10.2013 passed by the District and Sessions Judge, Tiruvarur in C.A.No.10 of 2011 confirming the judgment and order dated 31.03.2011 passed by the Judicial Magistrate No.I, Mannargudi in C.C.No.1394 of 1998.

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, in respect of the financial transaction between the complainant and the accused, a sum of Rs.45,000/- was due, towards which, the accused issued a cheque dated 18.02.1997 for the said sum, drawn on Lakshmi Vilas Bank in favour of the complainant; the complainant did not

present the cheque immediately, but, presented it on 18.06.1997 in City Union Bank, Mannargudi, where he was having his account; the impugned cheque was returned with the endorsement "account closed" vide return memo (Ex.P3); the complainant issued a statutory demand notice dated 01.07.1997 (Ex.P4), which was received by the accused vide acknowledgment card (Ex.P5); since the accused neither replied to the notice nor complied with the demand, the complainant initiated a prosecution against the accused in C.C.No.1384 of 1998 before the Judicial Magistrate No.I, Mannargudi, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

4.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

5.The complainant examined himself as P.W.1 and marked Exs.P1 to P10. The complainant examined Gokul Chandran, Cashier, Lakshmi Vilas Bank as P.W.2, in order to show about the return of the impugned cheque on the ground "account closed". He examined Sudandiraraj, Manager, City Union Bank as P.W.3. One Gurumanickam and Murali, Advocates were examined as P.W.4 and P.W.5 respectively, to prove the exchange of earlier notices between the parties viz. Exs.P8 and P9.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he gave a detailed explanation stating that, he had purchased two Ambassador cars bearing registration Nos.TNY 6667 and TMI 1404 on hire purchase from the complainant; at that time, he had handed over the original documents, promissory notes and unfilled cheque leaves numbering 100 to 250; he paid the dues towards TNY 6667 and got back the documents; but, he was not able to pay the dues towards TMI 1404 and therefore, the complainant took possession of it; thereafter, he took a loan to purchase an Ambassador car (registration No.TNU 5535); he paid all the dues towards that car and got back the documents from the complainant; the complainant took possession of TMI 1404 on 15.07.1997; he gave a police complaint against the complainant for illegal possession of the car and therefore, aggrieved by that, the complainant has used one of the cheques to file the present prosecution.

7.From the side of the accused, he examined himself as D.W.4 and examined his friends Rajendran, Ramesh and Tamizhselvan as D.W.1, D.W.2 and D.W.3 respectively. He also marked the plaint, written statement and judgment in O.S.No.30 of 2004 on the file of the Principal District Munsif, Mannargudi. This suit was filed as O.S.No.74 of 2000 by the complainant against the accused before the Principal Sub Judge, Nagapattinam and ultimately, it was transferred and re-numbered as O.S.No.30 of

2004 and it was dismissed by the Principal District Munsif, Mannargudi.

8. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 31.03.2011 in C.C.No.1394 of 1998, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. The appeal in C.A.No.10 of 2011 that was filed by the accused, was dismissed by the District Court, Tiruvarur on 31.03.2011. Aggrieved by the concurrent findings of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

9. Heard Ms.S.T.P.Kuilmozhi, learned counsel for the accused and Mr.Swami Subramanian, learned counsel for the complainant.

10. Before adverting to the rival submissions, it is necessary to refer 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)

11. Ms.Kuilmozhi, learned counsel for the accused submitted that the cheque in question was given to the complainant, during the purchase of car No.TMI 1404 in the year 1992 and the bank account was closed in the year 1994, but the complainant has misused the cheque in the year 1997.

12. The accused themselves have filed the documents in Exs.D1 to D4 viz. the plaint etc. in O.S.No.30 of 2004 (old number O.S.No.74 of 2000). The complainant has admitted the filing of this suit and it is the case of the complainant that, the cheque in question was not given in connection with the loan for purchasing car No.TMI 1404, but was given in connection with the loan for purchasing car No.TNU 5535. In fact, even in paragraph No.4 of the plaint, the complainant has clearly stated that a

sum of Rs.40,000/- was due from the accused as on 10.06.1996 and thereafter, the accused gave a letter dated 15.02.1997, admitting the principal and interest at Rs.45,000/- and had issued the impugned cheque. In paragraph No.5 of the plaint, the complainant has stated that he presented the said cheque on 18.06.1997 and it was dishonoured on the ground "account closed", for which, he has separately filed a criminal case.

13.It may be pertinent to state here that the criminal prosecution was filed in the year 1998 and the civil suit was filed only in the year 2000. Therefore, both the Courts have appreciated the evidence on record in the right perspective and have held that, the accused had failed to discharge the burden under Section 139 of the NI Act. In Uttam Ram Vs. Devinder Singh Hudan & Another [(2019)10 SCC 287], 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 the 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.

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"

Therefore, this Court does not find any infirmity in the concurrent findings of the two Courts below, warranting interference.

14.Ms.Kuilmozhi contended that the impugned cheque was not filled by the accused, but the complainant, who is a financier had filled the contents of the impugned cheque. This question has been answered by the Supreme Court in Bir Singh (supra), wherein it is held as follows :

"34.If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This, in itself, would not invalidate the cheque. The onus would still be on the accused to prove that the cheque

was not in discharge of a debt or liability by adducing evidence.”

Ex consequenti, this Criminal Revision is dismissed being devoid of merits. The trial Court is directed to secure the accused and commit him in prison to undergo 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.1437 of 2013. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The District and Sessions Judge,
Tiruvavarur.

2.The Chief Judicial Magistrate,
Thiruvavarur.(for Information)

3.The Judicial Magistrate No.I
Mannargudi

4.The Deputy Registrar/ The Assistant Registrar
Criminal Section,High Court, Madras

5.The Section Officer,
Criminal Section, High court,Madras.

+1 cc to M/s.S.T.P.Kuilmozhi, Advocate Sr.No. 13915

+1 cc to Mr.Swami subramanian, Advocate Sr.No. 14115

CRL.R.C.No.1437 of 2013

PA (CO)

RMP (22/07/2020)