

Bail Slip

The Appellant/Accused viz., S.Saravanan S/o.Subramani was directed to be released on bail vide this Court order dated 28.11.2013 made in M.P. 1/2013 in CrI.RC.1473/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No.1473 of 2013

Saravanan : Revision Petitioner/Accused
Vs.

V.Shanthi : Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 05.09.2013, passed by the Principal Sessions Judge, Thiruppur, in C.A.No.41 of 2012, confirming the judgment of conviction and sentence, dated 24.11.2012, passed by the Judicial Magistrate No.I, Thiruppur, in S.T.C.No.1357 of 2010.

For Petitioner : Mrs.N.Valliamma

For Respondent : Mr.J.Franklin

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 05.09.2013, passed by the Principal Sessions Judge, Thiruppur, in C.A.No.41 of 2012, confirming the judgment of conviction and sentence, dated 24.11.2012, passed by the Judicial Magistrate No.I, Thiruppur, in S.T.C.No.1357 of 2010.

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 family of the accused is very well known to her; on 15.10.2009, the accused borrowed Rs.97,000/- and executed a promissory note (Ex.P6); when the complainant demanded the return of the amount, the accused issued a cheque dated 11.01.2010 for Rs.97,000/- (Ex.P1); the complainant presented the said cheque on 20.01.2010

and it was returned with the endorsement "insufficient funds" on 22.01.2010, vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 02.02.2010 (Ex.P3), which was received by the accused on 05.02.2010; the accused sent a reply notice dated 16.02.2010 (Ex.P5), repudiating the debt and contending that he had borrowed money from the husband of the complainant and at that time, he had given the impugned cheque, but the cheque was not returned even after the loan was discharged; therefore, the complainant initiated a prosecution in S.T.C.No.1357 of 2010, before the Court of Judicial Magistrate No.I, Thiruppur, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.The complainant examined herself as P.W.1 and marked Exs.P1 to P6. The accused examined himself as D.W.1 and also examined Subbathal (D.W.2), his mother, and Devarasu (D.W.3) and marked Ex.D1.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.11.2012, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for six months and pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one month and also to pay Rs.97,000/- as compensation to the complainant.

6.The appeal in C.A.No.41 of 2012, that was filed by the accused, was dismissed by the Principal Sessions Judge, Thiruppur, on 05.09.2013.

7.Aggrieved by 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.

8.Heard Mrs.N.Valliamma, learned counsel appearing for the counsel on record for the accused and Mr.J.Franklin, learned counsel for the complainant.

9.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)

10.The complainant, in her evidence, has spoken about the loan of Rs.97,000/- that was given to the accused on 15.10.2009, the execution of promissory note (Ex.P6), the issuance of the impugned cheque (Ex.P1), its presentation and dishonour, the issuance of legal notice (Ex.P3), receipt of reply notice (Ex.P5) and the failure of the accused to comply with the demand.

11.It is the defence of the accused that he had borrowed Rs.10,000/- from the husband of the complainant and at that time, he had given blank promissory note and cheque, which have been misused by the complainant. Learned counsel for the accused placed strong reliance on Ex.D1 and contended that the accused has discharged the burden under Section 139 of the Negotiable Instruments Act.

12.This Court perused the evidence on record. Except saying that a sum of Rs.10,000/- was borrowed from the husband of the complainant and the said amount was also repaid, the accused had not placed any credible material for probalising his defence. Even in the reply notice (Ex.P5), the accused has not stated as to when he borrowed Rs.10,000/- and when he discharged it. Whereas, in the evidence of the accused (D.W.1), he has improved his version by saying that he borrowed Rs.10,000/- on 10.04.2009 and had returned it on 07.11.2009. Had the accused repaid the loan, he would have taken steps to get back the impugned cheque or at least, issued directions to his Bank to stop payment. However, that has not been done in this case. Ex.D1 is a copy of the complaint that was given by Subbathal (D.W.2), the mother of the accused, to the police, wherein, there is reference to a quarrel between Veluchamy and her and there is no request to the police to get back the impugned cheque. Ex.D1, a copy of the police complaint, is dated 30.01.2010, whereas, the impugned cheque was presented on 20.01.2010 itself and it was dishonoured on 22.01.2010. Therefore, both the Courts have rightly held that Ex.D1 has no relevance to the dispute in this case.

13.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], even that has not been done in this case. The accused has not denied his signature in the promissory note and the impugned cheque. In such view of the matter, this Court does not find any infirmity in the judgments of the two Courts below, warranting interference.

14.In fine, 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.1473 of 2013.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

mkn

To

- 1.The Principal Sessions Judge,
Thiruppur.
- 2.The Judicial Magistrate No.I,
Thiruppur.
- 3.The Chief Judicial Magistrate,
Thiruppur.

+lcc to Mr.J.Franklin, Advocate, SR.8386.
+lcc to Mrs.S.Valliamma, Advocate, SR.No.9180.

CA(CO)
CSR: 05.03.2020

Crl. R.C. No.1473 of 2013