BAIL SLIP

The Appellant/Accused viz., M.Natarajan, Aged 54 years. S/o.Late Muthaiyah, was released on bail vide court order dated 28.11.2013 in Crl.MP.No.1 of 2013 in Crl.R.C.No.1479 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.No.1479 of 2013

M.Natarajan ... Revision Petitioner/Accused

Vs.

A.Levy ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 02.08.2013, passed by the Principal Sessions Judge, Erode, in C.A.No.25 of 2013, confirming the judgment of conviction and sentence, dated 06.04.2013, passed by the Judicial Magistrate, Fast Track Court at Magisterial Level No.II, Erode, in S.T.C.No.156 of 2012.

For Petitioner : Mr.J.Rajendra Prabu (Amicus Curiae)

For Respondent : Mr.M.Guruprasad

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 02.08.2013, passed by the Principal Sessions Judge, Erode, in C.A.No.25 of 2013, confirming the judgment of conviction and sentence, dated 06.04.2013, passed by the Judicial Magistrate, Fast Track Court at Magisterial Level No.II, Erode, in S.T.C.No.156 of 2012.

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 28.03.2011, the accused borrowed Rs.1,60,000/- and towards the said debt, issued eight post dated cheques for Rs.20,000/- each, drawn on Indian Bank, out of which, in this case, we are concerned only with three cheques, viz., cheques dated 28.09.2011 (Ex.P1), 28.10.2011 (Ex.P2) and 28.11.2011 (Ex.P3); the complainant presented the three cheques for collection on 11.02.2012 and they were returned on 13.02.2012 with the endorsement "opening balance insufficient" vide return memos (Ex.P4 series); the complainant issued a statutory demand notice dated 20.02.2012 (Ex.P5), which was received by the accused vide postal acknowledgment card (Ex.P6); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.156 of 2012 before the Fast Track Court at Magisterial Level No.II, Erode, 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 P6.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the allegations and did not give any explanation as to the circumstances under which the impugned cheques came into the hands of the complainant. The accused examined one Muthusamy as D.W.1 and examined himself as D.W.2. No document was marked from the side of the accused.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.04.2013, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.

7.The appeal in C.A.No.25 of 2013 that was filed by the accused was dismissed by the Principal Sessions Judge, Erode, on 02.08.2013.

8.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., through Mr.A.K.Kumaraswamy and Mr.S.Kaithamalai Kumaran, Advocates.

9.At the time of admission, this Court granted exemption to the accused from surrendering before the Appellate Court and also granted suspension of sentence and bail on 28.11.2013 in M.P.No.1 of 2013 in Crl.R.C.No.1479 of 2013.

10.When the matter was taken up for final disposal, the counsel for the accused reported "no instructions". Therefore, on 31.01.2020, this Court passed the following order:

> "The counsel for the petitioner reported 'no instructions'.
>
> 2.Therefore, this Court appoints Mr.J.Rajendra Prabu, Advocate (Enrl.No.2011/2011) as Amicus Curiae of the petitioner. Copies of the typed set of papers have been furnished to Mr.J.Rajendra Prabu.
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> 3.Post the matter on 04.02.2020 for arguments."

11.Heard Mr.J.Rajendra Prabu, learned Amicus Curiae appearing for the petitioner/accused and Mr.M.Guruprasad, learned counsel appearing for the respondent/complainant.

12.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 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. .... "
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> (emphasis supplied)

13.Mr.J.Rajendra Prabu contended that the complainant has not proved the debt satisfactorily and that the accused had discharged the burden under Section 139 of the Negotiable Instruments Act by examining himself as a witness.

14.Per contra, learned counsel appearing for the respondent refuted the said contention.

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

16.The complainant, who examined himself as P.W.1, has stated about the loan of Rs.1,60,000/- that was given to the accused on 28.03.2011, the issuance of eight post dated cheques for Rs.20,000/- each, including the three impugned cheques herein, the presentation of the three impugned cheques on 11.02.2012 and their dishonour on the ground "opening balance insufficient" on 13.02.2012, the issuance of statutory demand notice dated 18.02.2012 and its receipt thereof by the accused, and the failure of the accused to comply with the demand. In the cross-examination of the complainant (P.W.1), it was suggested to him that the eight cheques were given only as security on the promise that the complainant will arrange an educational loan for the daughter of the accused, but he did not arrange the loan and instead, misused the cheques. The complainant denied this suggestion. The defence was not able to make any serious dent in the testimony of the complainant (P.W.1) in the cross-examination.

17.Muthusamy, who examined himself as D.W.1, has stated that he knows the complainant and the accused; two years ago, he had given a loan of Rs.20,000/- to the accused; six months thereafter, when he asked the accused to return the loan amount, the accused took him to the complainant and asked for a loan of Rs.50,000/-; at that time, the complainant asked the accused to give ten cheques as security, but the accused gave only eight cheques as security; twenty days later, the accused returned his loan of Rs.20,000/-; at that time, the accused told him that the complainant had not given the promised loan.

18.The accused, who examined himself as D.W.2, has stated that he knows the complainant for 15 years; he wanted money for his daughter's education, for which, he used to borrow money from the complainant frequently and then return; two years ago, he wanted a loan for his daughter's studies; he approached the complainant and asked him to arrange a loan; at that time, the complainant took eight blank cheques as security, but did not arrange the loan; in the meantime, a complaint was filed against the complainant in connection with a problem in the Church; the complainant thought that the accused had engineered the complaint and therefore, he (complainant) filled up the cheques, presented them and has prosecuted him (accused). In the cross-examination, the accused (D.W.2) categorically admitted that he had issued the three impugned cheques. He also stated that the cheques were dishonoured by his Bank and he received a notice from the complainant, for which, he did not send any reply.

19.Neither Muthusamy (D.W.1) nor the accused (D.W.2) has clearly stated as to when the eight cheques were given to the complainant. They have also not explained as to why they did not take any action to get back the cheques, once the complainant failed to arrange the loan. In this case, the complainant has not presented the cheques on the dates mentioned therein, but has presented the three impugned cheques only on 11.02.2012. If the complainant had failed to arrange the promised loan, the accused would have issued directions to his Bank to stop payment, but that was not done. The accused also did not issue any reply notice to the statutory demand notice sent by the complainant. Of course, that by itself, cannot be a reason to hold against the accused. But, that circumstance, if viewed cumulatively with other circumstances, does make this Court to reject the defence theory. The defence theory, that the eight post dated cheques for Rs.20,000/- each were given in anticipation of a loan that was promised by the complainant, defies credibility.

20.In Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019), 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 ... ..."

21.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.

22.As a result, this Criminal Revision Case is devoid of merits and stands 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.

23.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.1479 of 2013.

The Tamil Nadu Legal Services Authority is directed to pay a sum of Rs.3,000/- to Mr.J.Rajendra Prabu, as remuneration.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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Copy to :

1. The Principal Sessions Judge,
   Erode.

2. The Judicial Magistrate,
   Fast Track Court at Magisterial Level No.II,
   Erode.

3. The Tamil Nadu Legal Services Authority,
   Chennai.

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

+1cc to Mr.J.Rajendra Prabu, Advocate, S.R.No.11118
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.11517

Crl.R.C.No.1479 of 2013

CA(CO)
CS/29/05/2020