



Bail Slip in Crl.RC.No.516 of 2013

The appellant/accused name V.S.Saravanan, S/o.V.Soundararajan was already directed to be released on bail in and by Order of this Court dated 16/04/2013 and made in M.P.No.1 of 2013 in Crl.RC.No.516 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 03.01.2020
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.516 of 2013

V.S.Saravanan .. Petitioner/Accused

Vs

E.P.Balraj .. Respondent/Complainant

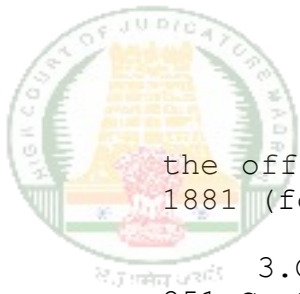
Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment and order dated 24.01.2013 passed by the I Additional Sessions Judge, Erode in C.A.No.115 of 2012 confirming the judgment and order dated 21.02.2012 passed by the Judicial Magistrate, Fast Track Court No.I, Erode in S.T.C.No.52 of 2011.

For Petitioner : Mr.M.Guruprasad
For Respondent : No appearance

O R D E R

For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant respectively.

2.It is the case of the complainant that on 18.08.2009, the accused borrowed a sum of Rs.4,00,000/- as hand loan and on the same day, gave a post-dated cheque bearing the date 18.09.2009 for Rs.4,00,000/- (Ex.P1), drawn on ICICI Bank, Erode branch; the complainant presented the said cheque on 18.09.2009 and the same was returned on 19.09.2009 with the endorsement "insufficient funds" vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 24.09.2009 (Ex.P3), which was received by the accused on 26.09.2009 vide acknowledgment card (Ex.P4). Since the accused did not comply with the demand, the complainant initiated a prosecution S.T.C.No.52 of 2011 before the Judicial Magistrate, Fast Track Court No.I, Erode for



the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

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

4. The complainant examined himself as P.W.1 and marked Exs.P1 to P4.

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 himself as D.W.1 and marked a photocopy of a petition that is said to have been filed by him in the Sub Court, Erode on 24.11.2008 under Sections 7 and 13 of the Provincial Insolvency Act, 1920, for declaring him as an insolvent, in which the complainant has been shown as a creditor for Rs.1,00,000/-.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.02.2012 in S.T.C.No.52 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment. The appeal in C.A.No.115 of 2012 that was filed by the accused was dismissed by the Additional Sessions Court, Erode on 24.01.2013. Challenging the concurrent findings of the two Courts below, the accused has preferred the present criminal revision under Section 397 read with 401 Cr.P.C.

7. Though notice was served on the complainant, none has entered appearance. Hence, the name of the complainant is printed in the cause list.

8. Heard Mr.M.Guruprasad, learned counsel for the accused.

9. Before advertng to the submissions of Mr.Guruprasad, 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. "

(emphasis supplied)

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10.Mr.Guruprasad contended that when the accused has initiated insolvency proceedings in I.P.No.58 of 2008, wherein, the complainant has been shown as one of the creditors, the complainant would not have given the loan of Rs.4,00,000/- on 18.08.2009. Therefore, he submitted that the assertion of the complainant that the accused had borrowed Rs.4,00,000/- on 18.08.2009 cannot be true. Both the Courts below have rejected this defence of the accused, by giving cogent reasons.

11.The complainant was cross-examined by the accused on 23.11.2012. In the cross-examination of the complainant, he was asked, whether he had entered appearance in the insolvency proceedings that was initiated by the accused, for which, the complainant stated that he has not received any notice and is not even aware of any such proceedings. Further, it was suggested by the accused that the complainant and others had abducted him (accused) and had forcibly obtained blank, but, signed cheques from him, with which, the prosecution has been initiated, which suggestion, the complainant denied.

12.The accused got into the witness box and examined himself as D.W.1 and stated that the complainant along with one Samikannu and Padma assaulted and abducted him and forcibly obtained three cheques and also made him sign in blank stamp papers. He further stated that he had given a police complaint with regard to this incident. However, he has not stated the date on which he was allegedly abducted, assaulted and the three cheques obtained from him by the complainant and two others. He has also not filed either a copy of the complaint given to the police or the F.I.R registered by the police. He has marked a photocopy of the petition, that is said to have been filed by him under Sections 7 and 13 of the Provincial Insolvency Act, 1920 as Ex.D1. A perusal of Ex.D1 shows that it is not even a certified copy, but, a photocopy of the petition, which does not bear the Court seal of the Sub Court, Erode.

13.The complainant, in the cross-examination, has clearly stated that he is not aware of the said insolvency proceedings, as he has not received any notice so far. The fact remains that the accused has not denied his signature in the impugned cheque (Ex.P1) and has also not denied the receipt of the legal notice (Ex.P3). Had the accused initiated the insolvency proceedings or had the accused been abducted and the cheques forcibly obtained, he would have issued a reply notice setting out these



facts. This was not done by the accused. This Court perused the original impugned cheque (Ex.P1) and did not observe any suspicious features thereon, to infer that the complainant had obtained a blank, but, signed cheque under force. Hence, both the Courts have rightly disbelieved the defence set up by the accused and this Court has no good reasons to disagree. 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 [2010 (4) CTC 118], even that has not been done in this case. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference.

In the result, this Criminal Revision is dismissed as being devoid of merits. 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.516 of 2013. The Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

gya

To

1.I Additional Sessions Court
Erode

2. Judicial Magistrate Court
Fast Track Court No.I
Erode.



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Copy to: 1. The Deputy Registrar
Criminal Side
High Court, Madras.
2. The Assistant Registrar
Criminal Side
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, SR.No.1036.

CRL.R.C.No.516 of 2013

RP (CO)
CSR: 10.02.2020