

Bail Slip

The Appellant in CrI.R.C.No.583 of 2013 viz., C.Rajamanickam S/o.Chinnaiya Gounder was directed to be released on Bail as per order of this Court dated 26.04.2013 made in MP.1 of 2013 in CrI.R.C.No.583 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.583 of 2013

C.Rajamanickam

... Petitioner/
Accused

Vs

S.A.Velmurugan

... Respondent/
Complainant

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the order dated 26.02.2013 passed by the I Additional District and Sessions Judge, Coimbatore in C.A.No.346 of 2012 confirming the order dated 07.12.2012 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in C.C.No.452 of 2011.

For Petitioner : Ms.V.Bhavani
for M/s.H.Rajasekar

For Respondent : Mr.S.Ilamparithi

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 20.06.2006, the accused borrowed a sum of Rs.2,00,000/- and executed a promissory note agreeing to repay the amount on demand with 12% interest per annum; when the complainant demanded the return of the amount, the accused gave a cheque dated 20.12.2006 for Rs.2,00,000/- (Ex.P1) drawn on ICICI Bank, Coimbatore; the complainant presented the said cheque on 09.01.2007 and the same was returned on 11.01.2007 with the endorsement "account closed" vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 22.01.2007 (Ex.P4), which was received by the accused on 30.01.2007 vide postal acknowledgment card (Ex.P5). Since the accused did not comply with the demand, the complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused before the Judicial Magistrate No.III, Coimbatore. The Judicial Magistrate No.III found that he did not have territorial jurisdiction to try the case, it was transferred to the Court of the Judicial Magistrate No.VI, Coimbatore and was numbered as C.C.No.11 of 2009. After constitution of Fast Track Courts, the case was transferred to the Court of the Judicial Magistrate, Fast Track Court No.II, Coimbatore and was renumbered as C.C.No.452 of 2011.

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

4.To prove his case, the complainant examined himself as P.W.1 and gave evidence about the loan given by him, the pro-note executed by the accused, the cheque issued by the accused, its presentation and dishonour on the ground "account closed", issuance of legal notice, receipt of it by the accused and non-compliance with the demand.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 07.12.2012 in C.C.No.452 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one six months simple imprisonment and pay a fine of Rs.4,000/-, in default to undergo one month simple imprisonment. The appeal in C.A.No.346 of 2012 that was filed by the accused was dismissed by the I Additional District and Sessions Court, Coimbatore on 26.02.2013. 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. Heard Ms.V.Bhavani, learned counsel for the accused and Mr.S.Ilamparithi, learned counsel for the complainant.

8. 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)

9. The accused examined himself as D.W.1 and took the defence that he had borrowed money from one Soundarrajan of Karur and the impugned cheque was given to him and the said Soundarrajan had handed over the impugned cheque to the complainant for filing the present prosecution. The accused has not denied the signature in the impugned cheque. The impugned cheque was returned on the ground "account closed", which will also attract Section 138 of the NI Act (See NEPC Micon Ltd. and others Vs. Magma Leasing Ltd. [AIR 1999 SC 1952]). The accused has not replied to the statutory demand notice (Ex.P4), that was issued by the complainant.

10. However, in the cross-examination of the complainant, the accused has suggested that for the loans taken from him, he (accused) had given 3½ sovereigns of his daughter's jewels as security, which suggestion, the complainant has denied. The accused has also suggested to the complainant that he had borrowed small amounts from the complainant from time to time and had issued the impugned cheque as security for those amounts, which the complainant has misused, which suggestion also the complainant has denied. After having taken such a stand, the accused, in his evidence, has stated that he had borrowed money from one Soundarrajan and had issued the impugned cheque. The said Soundarrajan, who in turn, had handed over the

cheque to the complainant in launching the present prosecution. 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. Both the Courts have rejected the aforesaid defence that was taken by the accused and this Court has no good reasons to disagree.

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.583 of 2013. The Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gya

To

1. I Additional District and Sessions Court
Coimbatore

2. Judicial Magistrate Court
Fast Track Court at Magisterial Level-II
Coimbatore

3. The Deputy Registrar
Criminal Side
High Court, Madras

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4.The Assistant Registrar(Crl.Side)
High Court, Madras.

+1cc to Mr.H.Rajasekar, Advocate sr.1045

CRL.R.C.No.583 of 2013

pm(co)
nr 04/02/2020



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