

BAIL SLIP

CRL.RC.NO. 819 TO 822 OF 2013

The Petitioner/Accused viz Kanaram, S/o.Gumnaramji, Prop Mahalakshmi Agencies 1027, 3rd main Road, M.M.D.A. Mathur, Manali, Chennai 600 068, was directed to be released on bail as per order of this Court dated 28/06/2013 made in M.P.No. 1 of 2013 (4 Nos) in Crl.Rc.No. 819 to 822 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.01.2020

DELIVERED ON: 24.01.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. Nos.819 to 822 of 2013

Kanaram

Petitioner/Accused in all Crl.R.Cs.

vs.

C. Hariram

Respondent/Complainant in all Crl.R.Cs.

Prayer in Crl.R.C. No.819 of 2013:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 19.04.2013 passed by the XV Additional Judge, City Civil Court, Chennai (FTC 1) in Crl.A. No.101 of 2012 confirming the judgment and order dated 22.05.2012 passed in C.C. No.3543 of 2009 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

Prayer in Crl.R.C. No.820 of 2013:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 19.04.2013 passed by the XV Additional Judge, City Civil Court, Chennai (FTC 1) in Crl.A. No.102 of 2012 confirming the judgment and order dated 22.05.2012 passed in C.C. No.4837 of 2009 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

Prayer in CrI.R.C. No.821 of 2013:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 19.04.2013 passed by the XV Additional Judge, City Civil Court, Chennai (FTC 1) in CrI.A. No.103 of 2012 confirming the judgment and order dated 22.05.2012 passed in C.C. No.5689 of 2009 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

Prayer in CrI.R.C. No.822 of 2013:

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 19.04.2013 passed by the XV Additional Judge, City Civil Court, Chennai (FTC 1) in CrI.A. No.100 of 2012 confirming the judgment and order dated 22.05.2012 passed in C.C. No.2798 of 2009 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

For petitioner Mr. R. Sankarappan
in all revisions

For respondent Mr. M. Arvind Kumar
in all revisions

COMMON ORDER

In view of commonality of issue involved, these criminal revisions are considered and decided by this common order.

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

3 In respect of four dishonoured cheques that were allegedly issued by the accused on four different dates, to the complainant, four prosecutions, viz., C.C. Nos.2798, 3543, 4837 and 5689 of 2009 were initiated by the complainant under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act") before the VIII Metropolitan Magistrate, George Town, Chennai and in all the four cases, separate judgments and orders were passed on 22.05.2012 convicting the accused and sentencing him to six months simple imprisonment in each case and to pay the cheque amount as compensation to the complainant.

4 The appeals preferred thereagainst by the accused were dismissed by the XV Additional Sessions Judge, Chennai, vide separate judgments and orders dated 19.04.2013, aggrieved by which, the accused has preferred the instant four criminal revisions.

5 Heard Mr. R. Sankarappan, learned counsel for the accused and Mr.M. Arvind Kumar, learned counsel for the complainant.

6 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,¹] Very recently, in Bir Singh vs. Mukesh Kumar², 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)

7 Now, coming to the case at hand, what is the case of the complainant?

7.1 In a case under Section 138 of the NI Act, the case of the complainant will unfold in the statutory demand notice itself. In this case, the complainant has issued four statutory demand notices, of course, on four dates, but, containing the same averments in paragraph nos.1 and 2, with changes mutadis mutandis. To cite one, paragraph nos.1 and 2 of the statutory demand notice dated 07.05.2009 read as under

"1. Towards amount due and payable by you to my client and in discharge of your liability, issued a cheque bearing no.437130 dated 15.04.2009 drawn on Union Bank of India, Madhavaram Branch, Chennai 600 110 for Rs.1,00,000/- (Rs.One lakh only) in favour of my client.

2. My client presented the above cheque for collection through its bank, viz., Union Bank of India, Chennai Main Branch, No.139, Broadway, Chennai. But, the above cheque was returned unpaid by the Union Bank of India, Madhavaram Branch on 15.04.2009, for the reason "Payment stopped". This was intimated to my client on 15.04.2009 by the Union Bank of India, Chennai Main Branch, No.139, Broadway, Chennai."

1 (2004) 7 SCC 659

<https://hcservices.ecourts.gov.in/hcservices/>

2 (2019) 4 SCC 197

7.2 While paragraph no.1 (supra) of the statutory demand notices relates to particulars of the four cheques issued by the accused, paragraph no.2 (supra) relates to the presentation of those four cheques and the reasons for their dishonour. Out of the four cheques, the cheque dated 15.04.2009 bearing no.437130 for Rs.1 lakh, which is the subject matter in C.C.No.2798 of 2009 was returned with the endorsement "payment stopped" and the other three cheques were returned with the endorsement "funds insufficient"

7.3 The accused issued reply notices in C.C. Nos.2798 and 3543 of 2009 and not in respect of other two cases. The defence of the accused will be discussed later.

7.4 Now, coming to the averments in the four complaints, paragraph nos.1 to 3 are verbatim, but, in paragraph no.4, the details of the cheque alone vary. Paragraph nos.1 to 4 are extracted below:

"1. The complainant submits that the accused had approached the complainant and said that for the purpose of expanding his business of distributorship, he requires huge amounts for investment. He further offered that if the complainant invests an amount of Rs.3,00,000/-, the complainant can also become one fourth partner in the said business within a period of three years. As such, believing the representations of the accused, the complainant had entrusted a total amount of Rs.3,00,000/- with the accused on various dates, and the accused had also acknowledged the receipt of the same.

2. The complainant submits that after receipt of the above amounts, the accused had also received a computer worth Rs.25,000/- from the complainant saying that the same would be utilised for the partnership business. Believing the representations made by him as above the complainant had entrusted and parted with the huge amount of Rs.3,00,000/- and the computer worth Rs.25,000/- with the accused.

3. The complainant submits that for the past several months the complainant has been demanding the accused to enter into partnership as agreed upon. But he had been giving only evasive replies. Finally, he had disagreed to get into partnership and agreed to repay the amount given to him for which he had issued a number of cheques. Except one cheque, all the other cheques were dishonoured.

4. The complainant states that towards amount due and payable by the accused to the complainant and in discharge of part of liability, the accused issued a cheque bearing No.437130 dated 15.04.2009 drawn on

110 for Rs.1,00,000/- (Rs. One lakh only) in favour of the complainant."

7.5 On notice, the accused entered appearance in all the four cases and when questioned under Section 251 Cr.P.C., he denied the accusation.

7.6 The complainant filed four proof affidavits with improved averments, the relevant portion of one of which, is as follows:

"I am the complainant in the above case. The accused had approached me and said that for the purpose of expanding his business of distributorship he requires huge amounts for investment. He further offered that if I invest an amount of Rs.3,00,000/-, I can also become one fourth partner in the said business within a period of 3 years. As such believing the representations of the accused, I had entrusted a totally amount of Rs.3,00,000/- with the accused on various dates, and the accused had also acknowledged the receipt of the same. The accused had also entered into a mutual understanding dated 27.02.2006 in his letter pad. Pursuant to the said mutual understanding between me and the accused, the accused had received the amounts as detailed below from me on various dates:

Date	Amount received by the accused (Rs.)
27.02.2006	50,000
12.03.2006	60,000
17.03.2006	40,000
18.04.2006	50,000
10.05.2006	50,000
17.05.2006	50,000
Total 3,00,000	

The accused had also acknowledged the receipt of the above amounts in the Memorandum of Understanding dated 27.02.2006. I submit that after receipt of the above amounts, the accused had also

received a computer worth Rs.25,000/- from me saying that the same would be utilised for the partnership business. Believing the representations made by him as above, I had entrusted and parted with the huge amount of Rs.3,00,000/- and the computer worth Rs.25,000/- with the accused. Thereafter, for the past several months, I had demanded the accused to enter into partnership as agreed upon. But he had been giving only evasive replies. Finally, he had disagreed to get into partnership and agreed to repay the amount given to him together with an amount of Rs.2,00,000/- towards compensation, interest and profit and had agreed to repay totally an amount of Rs.5,50,000/- (Rupees Five Lakhs and Fifty Thousand only) for which he had issued a number of cheques. Except two cheques all the other cheques were dishonoured. This cheque (sic case) is confined to the only one cheque and the other cheques are subject matter of the other cases. Towards amount due and payable by the accused to me and in discharge of part of liability, the accused issued a cheque bearing No.437130 dated 15.04.2009 drawn on Union Bank of India, Madhavaram Branch, Chennai 600 110 for Rs.1,00,000/- (Rs. One Lakh only) in favour of me. The cheque dated 15.04.2009 is Ex.P.1. I presented the above cheque for collection through its bank, viz., Union Bank of India, Chennai Main Branch, No.139, Broadway, Chennai. But the above cheque was returned unpaid by the Union Bank of India, Madhavaram Branch on 15.04.2009, for the reason "payment stopped".

8 Mr. Sankarappan, learned counsel for the accused, made the following submissions:

a. In the statutory demand notices, there is absolutely no reference to details such as the quantum of debt, the date when the debt was incurred, etc.; but, in the complaints, the quantum of debt was quantified at Rs.3,00,000/- and another sum of Rs.25,000/- towards the value of a computer was added to it and totally, the debt was quantified at Rs.3.25 lakhs and in the complaints also, the complainant has not stated as to when and how the sum of Rs.3 lakhs was paid to the accused, but, had merely stated that it was obtained on various dates.

b. In the proof affidavits, the break-up figures for Rs.3 lakhs has been given and there is a reference to a Memorandum of Understanding dated 27.02.2006, which was not even filed by the complainant.

c. In the proof affidavits, the complainant has averred that the accused had agreed to repay Rs.5.50 lakhs and that the two cheques given by the accused were honoured and the rest were dishonoured; even in a civil suit, the evidence cannot go beyond the pleadings, but, in this case, the proof affidavits have gone beyond the complaints.

d. How can four cheques, each for Rs.1 lakh, totally amounting to Rs.4 lakhs be construed as given towards discharge of a debt of Rs.3.25 lakhs?

9 Per contra, Mr. Arvind Kumar, learned counsel for the complainant, made the following submissions:

a. As per the judgment of the Supreme Court in Bir Singh (supra), the revisional Court cannot re-appreciate the evidence and the cheque, by itself, carries with it, a presumption that it was issued for a debt.

b. The accused has given conflicting reply notices and has not been consistent in his defence and thereby, has not dislodged the presumption under Section 139 of the NI Act.

c. In the cross-examination of the complainant, the accused has only made suggestions which will not take the place of proof.

d. The accused did not adduce any rebuttal evidence to dislodge the presumption under Section 139 of the NI Act.

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

11 At the outset, it is worth pointing out that a prosecution under Section 138 of the NI Act is founded upon the following four seminal ingredients.

- i. Existence of a legally enforceable debt.
- ii. Issuance of cheque towards discharge of the debt.
- iii. Dishonour of the cheque and
- iv Failure to make payment after receipt of statutory demand notice.

12 It is true that the cheque carries with it, the presumption under Sections 118 and 139 of the NI Act and therefore, the complainant is not required to prove the debt. However, the complainant is required to plead about the existence of the debt in the complaint. Proof of debt is different from pleading of the existence of the debt. The

complainant is required to plead about the debt in the complaint, because, only then, the Court would know whether it was a legally enforceable debt or otherwise. In other words, the debt could have been a time-barred one or it could have been on an ab initio void contract. For example, if the accused had agreed to pay the proceeds of dacoity to the complainant and had issued a cheque as agreed to by him, a prosecution under Section 138 of the NI Act cannot be maintained for the dishonour of such a cheque.

13 In this case, in the statutory demand notices, there is absolutely no reference to the debt. A reading of the statutory demand notices show that a cheque for Rs.1 lakh was issued for a debt of Rs.1 lakh. In the complaints, the amount of debt has been quantified at Rs.3 lakhs, but, there is no whisper about the date on which the debt was incurred. From a reading of the complaints, it is seen that it is the case of the complainant that the accused promised to take him as a partner in some business (the nature of business has not been stated) and had taken Rs.3 lakhs for over a period of three years, besides a computer valued at Rs.25,000/-, towards which, he (accused) had given the impugned cheque for Rs.1 lakh.

14 Pertinent it is to state here that for the statutory demand notice dated 07.05.2009, the accused issued a reply notice dated 16.05.2009 contending that the impugned cheque no.437130 was found missing along with another cheque for which he has given a police complaint and that is why, he had issued stop-payment instructions to the bank. According to the learned counsel for the complainant, the accused has not proved this defence satisfactorily and hence, the conviction and sentence imposed on the accused should not be upset.

15 However, in paragraph no.2 of the reply notice dated 16.05.2009, the accused has stated as follows:

"2. My client states that your client for some time assisted him for doing business for which he was paid. But taking advantage of his access, your client has stolen two cheques and encashed Rs.1,25,000/-. Through your notice, it has become clear that all the missing cheques were stolen by your client."

16 Thus, it is the clear case of the accused that the complainant had assisted him in the business and during that time, the complainant had taken away the impugned cheque and also another cheque and hence, he (accused) had given instructions to his bank for "stop payment". Whereas, in the statutory demand notice dated 07.05.2009 issued by the complainant, the total liability was quantified only at Rs.1 lakh and nothing more. But, in the complaint, the complainant improved upon the case by saying that he had invested a total sum of Rs.3 lakhs in the business for over a period of three

years and towards the discharge of the said liability, the accused had issued the impugned cheque for Rs.1 lakh.

17 While this dispute was pending, the complainant presented the second cheque dated 04.05.2009 on 14.05.2009 which was dishonoured on the ground "funds insufficient". Towards that cheque also, the complainant issued a stereotyped statutory demand notice dated 20.05.2009 without disclosing the debt as was given for the earlier cheque. Likewise, the complainant presented the third cheque for Rs.1 lakh on 27.07.2009 and issued a stereotyped statutory demand notice dated 31.07.2009. The complainant presented the fourth cheque on 01.07.2009 which was returned on the same day and the complainant issued the fourth demand notice on 16.07.2009 with the same averments.

18 Now, let us assume that the debt was Rs.3.25 lakhs (cash of Rs.3 lakhs and Rs.25,000/- being value of a computer). The accused has stated in the reply notice dated 16.05.2009 that the complainant has encashed Rs.1,25,000/-. The complainant, in the complaint in C.C. No.2798 of 2009, has stated in paragraph no.3 that the accused had issued a number of cheques and all the cheques, except one, were dishonoured. Whereas, in the proof affidavits, the complainant has stated that the accused had issued a number of cheques and all the cheques except two, were dishonoured. In other words, the complainant accepted that two of the cheques of the accused were honoured, which is also the case of the accused in the reply notice dated 16.05.2009. According to the accused, the two cheques were totally for a sum of Rs.1.25 lakhs/-. Even if we were to agree with the case of the complainant that the debt was for Rs.3.25 lakhs, receipt of Rs.1.25 lakhs by the complainant would reduce the debt to Rs.2.00 lakhs (Rs.3.25 lakhs - Rs.1.25 lakhs). In that case, how is it that the complainant presented four cheques of Rs.1 lakh each, totally amounting to Rs.4 lakhs, for a debt of Rs.2 lakhs?

19 Mr. Arvind Kumar, learned counsel for the complainant submitted that though the principal amount is Rs.3.25 lakhs, yet, the accused had agreed that he would pay Rs.5.50 lakhs. This theory of Rs.5.50 lakhs surfaces for the first time only in the proof affidavits and does not appear either in the statutory demand notices or in the complaints. Though the complainant has stated in the proof affidavits that there was a memorandum of understanding dated 27.02.2006, the same was not pleaded in the complaints nor was it marked during trial. Even assuming for a moment that there existed a memorandum of understanding dated 27.02.2006 between the complainant and the accused, it could have been only for a sum of Rs.3 lakhs and not for Rs.5.50 lakhs. As alluded to above, the theory of Rs.5.50 lakhs was proffered by the complainant only after the accused took the stand in the reply notice that a sum of Rs.1.25 lakhs was already taken away by the complainant by presenting two cheques earlier. Thus, it is

obvious that at every stage of the case, the complainant has been improving his versions to stymie the defence taken by the accused.

20 Mr. Arvind Kumar took this Court through the reply notice dated 26.06.2009 given by the accused in C.C. No.4837 of 2009 and submitted that there are inter se contradictions in the defence of the accused. Even assuming for a moment that there are contradictions, the complainant cannot take advantage of the same like in a civil case. The accused is entitled to take conflicting defences, but the complainant who wants to punish the accused, must be consistent in his case. All these aspects have been overlooked by the two Courts below while convicting the accused. Though the burden under Section 139 of the NI Act is on the accused, as held by the Supreme Court in Rangappa vs. Sri Mohan³, the same can be discharged by preponderance of probability, which, the accused in this case has done.

21 Next, coming to the reliance placed by the learned counsel for the complainant on Bir Singh (supra), the facts in the said case are totally different. In that case, there was a single cheque and single prosecution therefor, whereas, in the case at hand, in respect of an allegedly single debt, there were four cheques issued on different dates. That is why, the complainant has not stated anywhere as to when the accused had issued the impugned cheques. On the contrary, the accused, in his reply notice dated 15.06.2009 in C.C. No.4837 of 2009, has stated that the complainant gave a false complaint in Manali Mathoor Police Station, took the accused to the police station on 27.05.2009 and obtained two cheques, viz., cheque bearing no.488263 dated 27.06.2009 for Rs.1 lakh and cheque bearing no.488264 dated 27.07.2009 for Rs.1 lakh. Thus, these two cheques are the basis for the prosecution in C.C. Nos.4837 of 2009 and 5869 of 2009, respectively. This Court does not find any inconsistency in the case of the accused. In other words, while the dispute between the complainant and the accused qua the cheques dated 15.04.2009 and 04.05.2009 was pending, especially when the accused had issued a reply notice dated 16.05.2009, he was taken to the police station on 27.05.2009 and further two cheques for Rs.1 lakh were obtained, about which, he has clearly set out in his reply notice dated 15.06.2009 (Ex.P.5) in C.C. no.4837 of 2009. This explains why in the proof affidavit that was filed by the complainant during trial, the debt has been bolstered from Rs.3.25 lakhs to Rs.5.50 lakhs.

22 In such perspective of the matter, this Court is of the considered opinion that the conviction and sentence of the accused in all the four cases warrants interference and they are accordingly set aside.

Ex consequenti, these criminal revisions are allowed. Any amount deposited by the accused shall be refunded. Bail bond, if any, executed by the accused shall stand discharged.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The XV Additional Sessions Judge
City Civil Court (FTC 1)
Chennai
- 2 The VIII Metropolitan Magistrate
George Town
Chennai
3. The Chief Metropolitan Magistrate,
Egmore, Chennai (For information)
4. The Deputy Registrar (Crl. Side)
with a direction to return the
original records to the respective
Courts

+1cc to Mr.R.Sankarappan, Advocate, S.R.No. 5426
+8cc to Mr.M.Arvind Kumar, Advocate, S.R.No. 4998 to 5001

RJI (CO)
GN(10/02/2020)

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