Bail Slip

The Petitioner/Accused namely Gopal @ Rajagopal S/o. Devadas Gandhi was released on bail as per order dated 04.07.2013 in M.P. 1/2013 in Crl.R.C.No.832 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.832 of 2013

Gopal @ Rajagopal .. Petitioner/ Accused

Vs

Krishnamurthy .. Respondent/ Complainant

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment and order dated 10.01.2013 passed by the III Additional District and Sessions Judge, Virudhachalam in C.A.No.24 of 2012 confirming the judgment and order dated 09.01.2012 passed by the District Munsif-cum-Judicial Magistrate, Neyveli in S.T.C.No.226 of 2009.

For Petitioner : Mr.M.Tamil Thendral Arasu
for Mr.V.Murali

For Respondent : Mr.N.E.A.Dinesh

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 13.09.2009, the accused borrowed Rs.6,50,000/- towards which, the accused gave a post-dated cheque dated 14.10.2009 for Rs.6,50,000/- (Ex.P1), drawn on Karur Vysya Bank, Neyveli; the complainant presented the said cheque on 14.10.2009 in State Bank of India, where he was having his account; the said cheque was returned unpaid with the endorsement “funds insufficient” vide bank memo dated 15.10.2009 (Ex.P3); the complainant issued a statutory demand notice dated 30.10.2009 (Ex.P5), which was received by the accused vide acknowledgment card (Ex.P6); the accused did not give any reply nor comply with the demand. Therefore, the complainant initiated a prosecution in S.T.C.No.226 of 2009 before the District Munsif-cum-Judicial Magistrate, Neyveli 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 Ex.P1 to Ex.P6.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and did not offer any explanation as to the circumstance under which, the cheque issued by him came into the hands of the complainant.

6.The accused examined himself as P.W.1 and stated that, he wanted to purchase a land from Sri Lakshmi Finance Limited, in which, one Ram was a partner; the complainant and his son Mahesh, acted as mediators between the accused and Ram; the price of the land was fixed at Rs.4,50,000/- and on 06.05.2008, the accused gave Rs.2,00,000/- as advance to Ram; since there was encumbrance in the land, the accused decided not to purchase it; when he asked Ram to return Rs.2,00,000/-, Ram gave a cheque dated 12.05.2008, which was dishonoured; when the accused wanted to take legal action against Ram, Ram, in collusion with the complainant, filled up the impugned cheque (Ex.P1), which was given by the accused earlier and initiated the present prosecution.

7.The accused examined Meiyappan, Manager of State Bank of India, where the complainant was having his account, as D.W.2, in order to show that there was no money in that account and Vijay Sakthidas, Manager, Karur Vysya Bank as D.W.3, where the accused is having his account, in order to show that Rs.60,000/- was paid to Mahesh, son of the complainant on 07.08.2008. The accused further examined Mahesh, son of the complainant as D.W.4, in order to prove that he gave Rs.60,000/- as loan to Mahesh on 07.08.2008.

8.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 09.01.2012 in S.T.C.No.226 of 2009, 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.5,000/-, in default to undergo six months simple imprisonment. Out of the fine of Rs.5,000/-, a sum of

Rs.2,500/- was directed to be paid as compensation to the complainant. The appeal in C.A.No.24 of 2012 that was filed by the accused was dismissed by the III Additional District and Sessions Court, Virudhachalam on 10.01.2013. Aggrieved by 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.

9.Heard Mr.M.Tamil Thendral Arasu, learned counsel representing Mr.V.Murali learned counsel on record for the accused and Mr.N.E.A.Dinesh, learned counsel for the complainant.

10.Learned counsel for the accused contended that the accused has discharged his burden under Section 139 of the NI Act satisfactorily. However, learned counsel for the complainant refuted the contentions.

11.Before adverting to the rival submissions, it may be necessary to state here 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)

12.The accused has not denied his signature in the impugned cheque (Ex.P1). This Court perused the original cheque (Ex.P1) and did not find any suspicious feature in it. The defence of the accused is that the impugned cheque was given to one Ram, which has been misused by the complainant. The accused received the statutory demand notice (Ex.P5), but did not choose to give any reply. It is the case of the accused that he gave Rs.2,00,000/- to Ram on 06.05.2008 for purchasing a land. He has also stated that the price of the land was fixed at Rs.4,50,000/-. When the price of the land has been fixed, it is not known as to why, the accused should give a blank cheque to Ram through the complainant, especially when the accused is the buyer. Normally, the balance sale consideration is paid by the buyer at the time of registration.

13.It is the case of the accused that there was an encumbrance in the land and therefore, the deal did not go through, on account of which, Ram returned Rs.2,00,000/- on 12.05.2008 vide Ex.D1. However, the case of the complainant is that the accused had borrowed Rs.6,50,000/- on 13.09.2009, towards which, he has given the impugned cheque dated 14.10.2009. Thus, it is apparent that the land transaction relates to May 2008, whereas, the transaction in this case relates to September, October 2009. Assuming for a moment that the accused had given a blank but signed cheque to Ram, he would have taken steps to get the cheque back, when Ram's cheque dated 12.05.2008 was dishonoured. The accused would have atleast issued stop payment instructions to his bank, which was not done. Even in the 313 Cr.P.C. statement, the accused did not take this plea.

14.Learned counsel for the accused contended that the complainant did not have enough money in his account as could be seen from the evidence of D.W.2. The transaction in question took place in September 2009 and D.W.2 was examined on 17.11.2011 and the bank statement of the complainant was marked as Ex.D3. The complainant, in his evidence, has stated that he has a cinema theatre and has other businesses also. Therefore, one cannot say that the complainant was not a man of means.

15.The accused examined Mahesh, son of the complainant, in order to prove that a sum of Rs.60,000/- was given as loan to Mahesh on 07.08.2008. Mahesh, in his evidence, has stated that, his father Krishnamoorthy is in cinema line and that he is not living with his father. He has further stated that the accused requested him to get Rs.60,000/- from Karur Vysya Bank and hand it over to him because, the accused did not want his other creditors to know about his dealings. The accused should have declared this witness hostile. But, strangely that was not done. 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.832 of 2013. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gya
To
1.The III Additional District and Sessions Judge
Virudhachalam

2.District Munsif-cum-Judicial Magistrate
Neyveli

3.The Chief Judicial Magistrate, Cuddalore

Copy to

1.The Deputy Registrar
Criminal Side
High Court, Madras

2.The Assistant Registrar
Criminal Section
High Court, Madras 104.

+1 CC to Mr.V.Nicholas, Advocate sr 1692

CRL.R.C.No.832 of 2013

CA(CO)
SP(13/02/2020)