

Bail Slip

The Petitioner/Accused viz., Poonkodi, W/o.Dhanabalan, was released on bail as per order of this Court dated 30/01/2017 in CrI.MP.No.59 and 61 of 2017 in CrI.R.C.No.10 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

C O R A M

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

Criminal Revision Case No.10 of 2017

Poonkodi .. Petitioner/Accused

Vs

M.Vijayakumar .. Respondent/Complainant

Criminal Revision Case is filed against the judgment dated 09.12.2016 made in C.A.No.62 of 2016 on the file of the I Additional District and Sessions Judge, Erode, confirming the conviction imposed in judgment dated 01.03.2013 made in STC.No.339 of 2013 on the file of the Judicial Magistrate (F.T.C.) No.I, Erode.

For petitioner	...	Mr.A.Thiyagarajan
For Respondent	...	Mr.C.S.Saravanan

O R D E R

The Criminal Revision Case is directed against the judgment dated 09.12.2016 made in C.A.No.62 of 2016 on the file of the learned I Additional District and Sessions Judge, Erode, confirming the conviction and sentence imposed in judgment dated 01.03.2013 made in STC.No.339 of 2013 on the file of the learned Judicial Magistrate (F.T.C.) No.I, Erode.

2. The petitioner is an accused and the respondent is the complainant in STC.No.339/2013. The petitioner has obtained a hand loan of Rs.1,60,000/- on 01.02.2013 from the complainant-respondent and undertaken to repay the said amount on 07.02.2013. To discharge the said debt, the accused has issued a post dated cheque for Rs.1,60,000/- to the respondent. When the same was presented for payment as per the instructions of the petitioner, it was returned as 'funds insufficient'. Thereafter, the complainant has issued a legal notice dated 19.02.2013 to the petitioner. On receiving the notice, the

accused neither paid the cheque amount nor sent any reply. Hence, the respondent has preferred a private complaint before the learned Judicial Magistrate No.2, Erode and the same was taken cognizance in STC.No.1527/2013. Subsequently, it was transferred to the Judicial Magistrate, Fast Track Court No.I, Erode and renumbered as STC.No.339/2013.

3. During trial, on the side of the complainant, two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.8 have been marked. On the side of the accused, she herself examined as D.W.1. After trial, the trial Court found the petitioner guilty under Section 138 of the Negotiable Instruments Act (hereinafter shortly referred to as 'the Act') and sentenced her to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a further period of 15 days. Aggrieved over the same, an appeal was preferred by the petitioner in C.A.No.62/2016 on the file of the learned I Additional District and Sessions Judge, Erode and by judgment dated 09.12.2016, the appeal was dismissed by confirming the conviction and sentence passed by the trial Court. Hence, the present revision by the petitioner-accused.

4. The learned counsel for the petitioner would contend that at no point of time, the petitioner has obtained a loan of Rs.1,60,000/- from the respondent/complainant and the cheque-in-question has been given only as a security for the previous business transaction. The learned counsel would further contend that the trial Court has misconstrued the facts and has convicted the petitioner for the offence as stated above, which is contrary in the eye of law. The learned counsel would also contend that the presumption to discharge the debt by the petitioner has not been rebutted by the complainant and hence, this revision may be allowed by setting aside the conviction and sentence imposed on the petitioner.

5. The learned counsel for the respondent would contend that the petitioner has borrowed the amount from the respondent, but failed to repay the same and the same was properly appreciated by the Courts below and rendered the findings accordingly. Hence, the learned counsel sought to dismiss the present revision.

6. Heard both sides and perused the materials available on record including the judgments of the Courts below.

7. On a perusal of the records, it is seen that the petitioner has received a sum of Rs.1,60,000/- towards hand loan from the respondent on 01.02.2013 and undertaken to repay the said amount on 07.02.2013. To discharge the said debt, the accused has issued a post dated cheque for Rs.1,60,000/- to the

respondent. When the said cheque was presented for encashment, it was returned dishonoured stating 'funds insufficient'. But the defence of the petitioner is that she issued the said cheque only as security for the earlier business transaction. Therefore, according to the petitioner, the burden of proof only lies on the complainant.

8. Considering the facts and circumstances of the case and having regard to the materials available on record, this Court is of the view that the petitioner has not rebutted the presumption as contemplated under Section 139 of the Act. Once, the petitioner has admitted the signature and issuance of the cheque-in-question, it is for her to disprove the same that she has not received the said sum of Rs.1,60,000/- from the respondent. But, it appears that she has not discharged the said burden. Further, there is no evidence adduced before the trial Court to establish that the cheque-in-question had been handed over to the respondent only as a security. Even the petitioner has not sent any reply notice stating that she has not issued the cheque in discharge of a legally enforceable debt and there was no business transaction between her and the complainant after 2012. Hence, both the Courts below have rightly found the petitioner guilty of the offence under Section 138 of the Act.

9. That apart, it is settled law 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)

10. Therefore, this Court finds no infirmity or illegality in the findings so rendered by the Courts below, warranting interference.

11. Accordingly, this Criminal Revision stands dismissed, as devoid of merits. The trial Court is directed to secure the accused and commit her in prison to undergo the remaining period of sentence, if any. 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.10 of 2017. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate, Fast Track Court No.I, Erode.
3. The Chief Judicial Magistrate, Erode.

Copy to : 1.The Assistant Registrar(Crl.Side),
High Court of Madras, Chennai.

2.The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+2cc to Mr.A.Thiyagarajan, Advocate Sr.Nos.4091 & 4818

+1cc to Mr.C.S.Saravanan, Advocate SR.No.4831

AKM/17.03.2020 /4P-9C/

सत्यमेव जयते

Crl.R.C.No.10 of 2017

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