



BAIL SLIP

The Sentence imposed on the Appellant /Accused R.Rajesh S/o. Rajarathinam, alone was Suspended (since a accused was not in Jail) by order dated 16.09.2015 made in MP(MD)2 of 2015 in Crl RC (MD) 433 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD) .No.433 of 2015

R.Rajesh .. Petitioner / Accused

Vs.

1.A.M.Mohammed Jabarullah (died)

.. Respondent 1 / Complainant

2.Naseem Banu

3.Jahathunnisa

4.Mohamed Ajmal

5.Ayesha Jabeen

.. Respondents 2- 5

(Respondents 2 to 5 were impleaded as the legal heirs of first respondent vide order dated 12.03.2020 in Crl.M.P.(MD).No.2487 of 2020.)

PRAYER: Criminal Revision Case, filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the judgment passed in C.A.No.61 of 2014 on the file of the Additional District cum Sessions Court / Special Court for Essential Commodities, Thanjavur, dated 06.08.2015 confirming the Judgment in S.T.C.No.376 of 2013, dated 10.09.2014 on the file of the Fast Track Magistrate Court, Thanjavur.

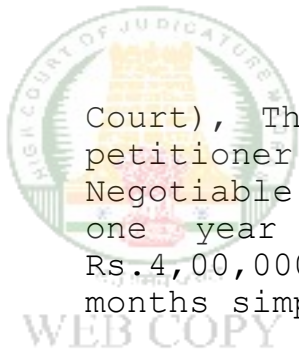
For Petitioner : Mr.M.S.Suresh Kumar

For Respondents : Mr.B.Anandan

ORDER

This revision case is filed by the petitioner / accused as against the order of conviction imposed by the Courts below for the offence under Section 138 of the Negotiable Instruments Act.

2.A complaint was filed by one Mr.A.M.Mohammed Jabarullah [deceased], the first respondent herein, as against this revision petitioner, before the learned Judicial Magistrate (Fast Track Court), Thanjavur and the said complaint was taken on file in S.T.C.No.376 of 2013 by the learned Judicial Magistrate (Fast Track



Court), Thanjavur and after the trial, the trial Court found the petitioner / accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.4,00,000/- (Rupees four lakhs only), in default to undergo three months simple imprisonment.

3.As against the conviction and sentence, the petitioner preferred an appeal before the Sessions Court and the same was taken on file in Crl.A.No.61 of 2014 by the learned Additional District and Sessions Judge, Special Court for Essential Commodities, Thanjavur and the appeal was dismissed by judgment dated 06.08.2015.

4.Aggrieved over same, the petitioner /accused preferred this Criminal Revision Case on the grounds that the trial Court and the appellate Court have not appreciated the evidence properly.

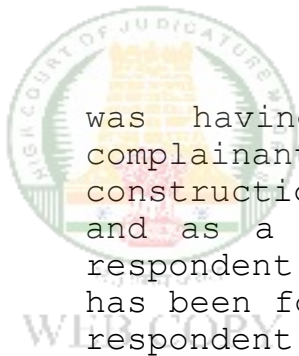
5.Pending this revision case, the first respondent / complainant died and therefore, on the petition filed by the legal heirs of the first respondent / complainant in Crl.M.P(MD) No.2487 of 2020, they were impleaded as respondents 2 to 5 on 12.03.2020.

6.Heard Mr.M.S.Suresh Kumar, learned counsel for the petitioner and Mr.B.Anandan, learned counsel for the respondents and perused the available records.

7.The case of the complainant is that he was running a Steel and Cement Business at Thanjavur and he knew this petitioner / accused during the business transaction and this accused is an Engineer doing certain building works on contract basis and used to purchase construction materials from his shop and therefore, he was having certain acquaintance with the accused and taking advantage of that acquaintance, on 25.03.2012, the petitioner / accused approached the respondent / complainant that he was in need of Rs.4 lakhs to meet out certain emergency expenses. Accordingly, the first respondent / complainant also gave Rs.4 lakhs on that day itself to the petitioner and in discharge of that loan amount, the accused gave a cheque bearing No.588924, dated 26.03.2012 of Corporation Bank, Thanjavur Branch. As instructed by the accused, the cheque was presented on 26.03.2012, but the same was dishonoured for 'funds insufficient' and therefore, after issuing statutory notice, he filed a complaint before the learned Judicial Magistrate on 11.05.2012.

8.The trial Court considering the evidence placed before it, found the petitioner guilty and convicted and the appeal filed by the petitioner was also dismissed by the appellate Court.

9.Mr.Suresh Kumar, learned counsel for the petitioner submits that the petitioner, as an Engineer was doing construction work and



was having business transaction with the first respondent / complainant. In the course of his business, he has purchased so many construction materials from the respondent / complainant's company and as a collateral security, he gave two blank cheques to the respondent / complainant, which were misused by him. This complaint has been foisted against him. According to the petitioner, since the respondent / complainant has supplied the substandard materials, the business transaction was stopped even in the year 2005 itself and this cheque has been presented in the year 2012, as if, the petitioner borrowed a sum of Rs.4 lakhs on 25.03.2012, which falls on Sunday and there is no possibility for complainant to have such huge sum of Rs.4 lakhs, as cash in the house and the amount was also lent without any valid document and also without referring any interest for the loan.

10.The learned counsel, in support of his contentions by referring to the reply notice sent by the petitioner on 08.06.2012, submitted that even in the reply notice, the petitioner referred to the misuse of another blank cheque bearing No.588925 by the complainant. He also relied upon the evidence of the Bank Manager and submitted that these cheques in question bearing Nos.588924 and 588925 were issued in the year 2005 and it is the specific case of the petitioner that those cheques, issued in the year 2005 were misused by the complainant to foist the complaint in the year 2012.

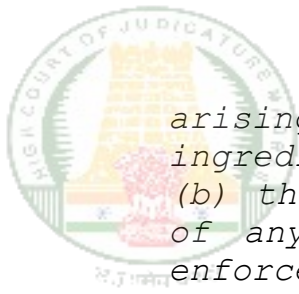
11.In support of his contentions, the learned Counsel for the petitioner relied on the decision of this Court in ***M.Sivakumar Vs S.Ravi, reported in 2018 (2) MWN (Cr) DCC 183 (Mad)***, wherein this Court has held as follows:

"9.On the other hands, the learned Counsel appearing for the respondent would submit that the accused never known to the complainant and he never issued cheque to the complainant. Even though he signed the cheque, it was handed over to DW2 as Security purpose for the loan borrowed by him from the complainant. Further, the accused has no need to borrow any amount as alleged in the complaint and that too the said borrowal on 18.02.2005 and the alleged cheque was issued on the next date, i.e., 19.02.2005. It is unheard of namely immediately after the borrowal the cheque made. Therefore, the first appellate Court has rightly acquitted the accused and prayed for dismissal of the present appeal.

The learned counsel appearing for the respondent relied upon the judgment reported in "2008(1) CTC 433 - Lrishna Janardhan Bhat Vs. Dattatraya G. Hedge" and the Hon'ble Supreme Court held that as follows:-

Negotiable Instruments Act, 1881 (26 of 1881), Sections

138 & 139 - Ingredients of offence and nature of presumption



arising under Section 139 - Section 138 has three ingredients viz. (a) that there is legally enforceable debt (b) that cheque was drawn for discharge in whole or in part of any debt or other liability which presupposes legally enforceable debt, and (c) that cheque so issued had been returned due to insufficiency of funds - Proviso appended to said Section provided for compliance of legal requirements before Complaint Petition can be acted upon by Court of law -Section 139 merely raised presumption that cheque was drawn in discharge of debt or other liability and presumption cannot be that there is legally enforceable debt."

12. In this judgement, the Hon'ble Supreme Court of India cited the judgement reported in "2007 (12) Scale 96 - K.Prakashan Vs. P.K.Surenderan" and held as follows :-12. In this judgement, the Hon'ble Supreme Court of India cited the judgement reported in "2007 (12) Scale 96 - K.Prakashan Vs. P.K.Surenderan" and held as follows :-

"12. The Act raises two presumptions; firstly, in regard to the passing of consideration as contained in Section 118 (a) therein and, secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability. Presumptions both under Sections 118 (a) and 139 are rebuttable in nature. Having regard to the definition of terms proved and disproved as contained in Section 3 of the Evidence Act as also the nature of the said burden upon the prosecution vis-a-vis an accused it is not necessary that the accused must step into the witness box to discharge the burden of proof in terms of the aforementioned provision.

13. It is furthermore not in doubt or dispute that whereas the standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability. "In John K. John v. Tom Varghese & Anr [JT 2007 (13) SC 222], this Court held:

"10. The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite



knowing that the respondent even was not in a position to discharge his burden to pay instalments in respect of the prized amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. If in a situation of this nature, the High Court has arrived at a finding that the respondent has discharged his burden of proof cast on him under Section 139 of the Act, no exception thereto can be taken."

Mr.Bhat relied upon a decision of this Court in *Hiten P.Dalal v. Bratindranath Banerjee* [(2001) 6 SCC 16] wherein this Court held:

"22. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the prudent man."

In the same judgment, the Hon'ble Supreme Court of India cited another judgment reported in .006(6) SCC 39 -*M. S.Narayana Menon Alias Mani Vs. State of Kerala and Another*, it was held that the once the accused is found to discharge his initial burden, it shifts to the complainant."

12.The learned counsel for the petitioner submits that the complainant has not substantiated his case that he was having sufficient source to part with such a huge mount as alleged by him. Though certain bank documents have been marked, there is no material to show that the money was withdrawn prior to the date of borrowal and for having possessed such a huge amount on a Sunday.

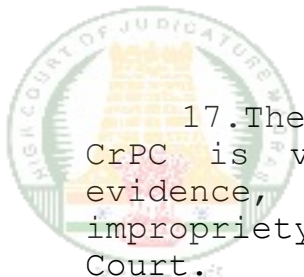


13.Mr.V.Anand, learned counsel for the respondents submits that the petitioner by referring the business transaction between him and the complainant, admitted his close proximity with the complainant and therefore, taking advantage of the same, on 25.03.2012, he approached the respondent / complainant for a urgent need of Rs.4 lakhs with an undertaking to return the same on the next day and received the amount and also issued the cheque in question. However, as undertaken by him, he did not make any payment to the complainant. As instructed by the petitioner the cheque was presented. Only after the dishonour of the cheque, a legal notice was also issued to the petitioner as contemplated under the Negotiable Instruments Act, on 04.04.2012. The petitioner also acknowledged the receipt of the same on 09.04.2012, but he has not made any reply within the statutory period as prescribed under the Act and therefore, the complaint was filed on 11.05.2012 before the trial Court.

14.According to the learned Counsel for the respondents, this reply notice has been conveniently made only on 08.06.2012, after filing of the complaint on 11.05.2012. Therefore, there is no reference about this reply notice in the complaint filed on 11.05.2012. Therefore, the contention of the petitioner that even in the proof affidavit, the reply notice was not referred to is not correct. In the proof affidavit, the respondent/complainant has clearly mentioned that after filing of the complaint, a reply notice was also received by him from the petitioner and therefore, it cannot be a ground to entertain this revision case.

15.The learned Counsel for the respondents would further submit that an attempt has been made by the petitioner / accused during the trial that the cheque in dispute was issued as a blank cheque in the year 2005, but it was denied by the petitioner during his cross examination. The petitioner has taken a plea in the reply notice that yet another cheque bearing No.588925 was misused at the instance of complainant, by foisting another case at Chennai. But, the petitioner / accused has not come forward to substantiate the same by producing those documents before the trial Court. Though the Manager has admitted in his evidence that the cheque in question was issued in the year 2005, he also stated in his evidence that the cheque book contains 50 leaflets and there is no prescribed time limit to the holder of the cheque to use the cheque within a stipulated time. In the absence of any valid grounds raised by the petitioner/ accused, it is not appropriate to entertain this revision case.

16.This Court paid its anxious consideration to the rival submissions made on either side and also perused the materials placed on record.



17.The scope of Criminal Revision under Section 397 r/w 401 CrPC is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

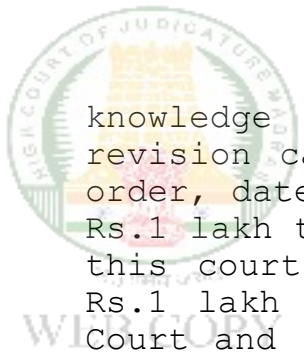
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18.This Court in Anbarasu Vs Mukanchand Bothra, reported in 2019 (3) MWN (Cr) DCC 1(Mad) held that while exercising the revisional powers under Section 397 r/w 401 CrPC, the Court is required to find out if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum.

19.Admittedly, this petitioner / accused was having certain business transactions with the first respondent/complainant. Taking advantage of the same, on 25.03.2012, the petitioner received a sum of Rs.4 lakhs from the respondent/complainant, by issuing a cheque that he can collect the said amount by depositing the cheque on the next day i.e., on 26.03.2012. Accordingly, the respondent/ complainant has also deposited the cheque on 26.03.2012, but it was returned for insufficient funds. Immediately, the complainant also issued a legal notice on 04.04.2012 to the petitioner and it was also acknowledged by him on 09.04.2012, but this petitioner/accused neither sent any reply to the notice within the statutory period nor paid the money. However, he sent a reply only on 08.06.2012 with certain allegations, even then, he did not make any attempt to substantiate the same before the trial Court. The respondent /complainant has also produced his Bank Account Statement as Ex.P6 to show that as on the date of borrowal, he was having Rs.14,29,506.16/- in his account, by which, he has established that he has sufficient sources of money and admittedly he is also a business man, having business establishment on selling some construction materials. Therefore, it cannot be stated that the petitioner would not have sufficient money of Rs.4 lakhs on a Sunday in his house.

20.As rightly pointed out by the learned counsel for the respondent/complainant, even the cheque book has been issued in the year 2005, there is no restriction that the holder of the cheque should use the cheques within a stipulated time. In this case, the petitioner has not denied that the cheque ExP1 and the signature found therein are not that of him. The courts below, considering the available evidence, has also rightly rejected the case of the petitioner and found him guilty and convicted. The reasons assigned by the petitioner in support of the petition are not sustainable. The grounds raised by the petitioner do not lead to any illegality, perversity or impropriety in the findings of the Courts below.

21.Accordingly, this Criminal Revision Case is dismissed. At
<https://hcs.eccourts.gov.in/hcs/entry> the learned counsel for the respondent brought to the



knowledge of this court that at the time of entertaining this revision case and suspending the order of sentence, this court by order, dated 16.09.2015, directed the petitioner to deposit a sum of Rs.1 lakh to the credit of the S.T.C.No. 376 of 2013. As directed by this court, the petitioner / accused has also deposited a sum of Rs.1 lakh to the credit of S.T.C.No.376 of 2013 before the trial Court and in view of the final order passed in this revision case, the respondent is permitted to withdraw the sum of Rs.1 lakh, which has been already deposited by the accused in the credit of S.T.C.No.376 of 2013 before the trial Court. The trial Court is directed to secure the accused and confine him to prison to undergo the period of imprisonment.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM/dsk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional District and Sessions Judge,
Additional District cum Sessions Court
/Special Court for Essential Commodities,
Thanjavur.
- 2.The Judicial Magistrate,
Fast Track Court, Thanjavur.

Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C. (MD) .No.433 of 2015
29.07.2020

VB (21.08.2020) 8P 5C