

BAIL SLIP

That the petitioner /Accused namely V.Palanivel was enlarged on bail and made in MP No. 1/2013 in Cr1 RC.No.1461/2013 dated 27.11.2013 on the file of this Honourable High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.No.1461 of 2013

V.Palanivel
S/o.Varadarajan ... Petitioner /Appellant/Accused

Vs.

Anilkumar
S/o.Manoharlal ... Respondent/Respondent/Complainant

Prayer: Revision petition filed under Section 397 r/w 401 of Cr.P.C. to call for the records relating to the Judgment dated 13.11.2006 on the file of the learned Judicial Magistrate No.1, Salem in C.C.No.424 of 2004 as confirmed by the learned I Additional Sessions Judge, Salem by the Judgment in Criminal Appeal No.144 of 2006 dated 21.08.2007 and set aside the same.

For Petitioner : Mr.S.Rajendra Kumar
(Appointed by the Court to represent petitioner)

For Respondent : Mr.Kalyanaraman

O R D E R

(The case has been heard through video conference)

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 20.10.2003, the accused borrowed a sum of Rs.1,25,000/-, towards repayment of which, the accused gave four post dated cheques, dated 20.12.2003 for Rs.50,000/- (Ex.P1), and three post dated cheques

for Rs.25,000/- each dated 30.12.2003, 10.01.2004, 20.01.2004 respectively (Ex.P2 to Ex.P4), drawn on Indian Overseas Bank, Salem; the complainant presented the said four cheques on 21.01.2004 in Indian Bank, Salem-1 Branch, where he was having his account; the said cheques were returned unpaid with the endorsement funds insufficient vide bank memo dated 21.01.2004 (Ex.P5 to Ex.P8); the complainant issued a statutory demand notice dated 29.01.2004 (Ex.P10), which was received by the accused vide acknowledgment card dated 31.01.2004 (Ex.P11); the accused did not give any reply nor comply with the demand. Therefore, the complainant initiated prosecution by way of private complaint in C.C.No.424 of 2004 before the Learned Judicial Magistrate, Salem 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.P11.

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 circumstances under which, the cheques issued by him came into the hands of the complainant. However, he examined himself as D.W.1 and stated that, the accused had business dealings with the complainant and that the blank cheques which have been given as security during the course of business transactions were misused by the complainant and that he had not borrowed any amounts from the complainant and he had marked Ex.D1 to D6 invoice slips to prove there was business dealings.

6.The accused also examined one Kandasamy, as D.W.2, in order to show that there was a business dealing between the accused and the complainant. D.W.2, who is the cycle rickshaw rider had deposed that he used to the business premises of the complainant and the accused for the purpose of loading and unloading the steel sheets and that he was not aware of anything about the loan transactions between the parties.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 13.11.2006 in C.C.No.424 of 2004, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and the accused was also directed to pay a compensation of Rs.1,25,000/- to the complainant, within a period of two months. The appeal in CrI.A.No.144 of 2006 that was filed by the accused was

dismissed by the learned I Additional Sessions Judge, Salem on 21.08.2007. 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.

8. Heard Mr.S.Rajendra Kumar, learned counsel appearing for the accused and Mr.S.Kalyanaraman, learned counsel appearing for the complainant.

9. Learned counsel for the accused contended that the accused has discharged his burden under Section 139 of the NI Act satisfactorily by examining himself and D.W.2 to prove that there was business dealing between him and the complainant and that the cheques were handed over to the complainant as security in the course of business and the cheques which were handed over to the complainant during the course of business had been misused by the complainant. The Courts below have not properly analysed the evidence with regard to the same.

10. Per contra, learned counsel for the complainant would submit that the stand of the complainant is that though there was a business transaction between the complainant and the accused, the cheques were handed over in respect of a personal loan taken by the accused from the complainant. Further, the Courts below have taking into consideration of the evidence, had categorically held that if at all the amounts could have been repaid by the accused, he would have replied to the legal notice and also taken steps to retrieve the cheques which were in the custody of the complainant. Having not done so, the Courts below had not accepted the submissions of the accused and no other material has been produced to prove that the amount was repaid to the complainant and the Courts below have rightly convicted the accused.

11. Before advertng 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 cheques (Ex.P1 to Ex.P4). This Court perused the original cheques (Ex.P1 to Ex.P4) and did not find any suspicious feature in it. The defence of the accused is that the impugned cheques were given only for the business dealings, which have been misused by the complainant. The accused received the statutory demand notice (Ex.P10), but did not choose to give any reply. It is the case of the accused that he had issued the cheques (Ex.P1 to Ex.P4) to the complainant on 20.12.2003, 31.12.2003, 10.01.2004, 20.01.2004 respectively for the business dealings.

13.It is the case of the complainant that the accused was manufacturing bureau and the complainant was carrying on business in the name and style of "Krishna Steels" and supplying steel for the manufacturing of bureau and that there was a business transaction between both of them upto 2002, and that he was also doing finance business and that he had given a personal loan to the accused and that there was a due of Rs.1 Lakh, since the complainant insisted the accused to give cheques, the accused had issued four post dated blank cheques (Ex.P1 to P4) to the complainant, for the purpose of security for the above said due. On the side of the accused Ex.D1 to Ex.D6 were marked, to show that there was a transaction between the accused and the complainant and there was business dues and during the 5th month of 2002 the above said due of Rs.1 Lakh was repaid to the complainant. However, it is the case of the complainant that Ex.P1 to Ex.P4 were given purely for the purpose of borrowal of personal loan of Rs.1,25,000/- by accused on 20.10.2003 and the accused agreed to repay along with interest. Ex.D1 to D6 series are only quotations given by the complainant to the accused during the business transaction and those documents have nothing to do with the borrowal of the above said loan of Rs.1,25,000/-. Assuming for a moment that the accused had given a blank but signed cheques to the complainant, he would have taken steps to get back the cheques, when the cheques issued by him were dishonoured. The accused would have atleast issued stop payment instructions to the banker, which was not done. Even in the 313 Cr.P.C. statement, the accused did not take this plea.

14.The accused had examined one Kandasami (D.W.2), who is a cycle rickshaw rider, who had deposed that he would go to the business premises just for the purpose of loading and unloading the steel sheets and he was not aware of any loan transactions between the parties. 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.

15. In the result, this Criminal Revision is dismissed as being devoid of merits. The conviction and sentence imposed by the Trial Court, which is confirmed by the Appellate Court stands unaltered. The Trial Court is hereby directed to secure the accused and commit him to prison to undergo sentence. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The Judicial Magistrate No.1
Salem

2.The Chief Judicial Magistrate, Salem(for information)

3.The I Additional Sessions Judge
Salem

4.The Deputy Registrar
Criminal Side
High Court, Madras

5. The Record Keeper,
Criminal section, High Court, Madras.

+1CC to M/s. Norton & Grant Advocate, SR No. 5118

+1CC to M/s. S. Kalyanaraman Advocate, SR No. 5160

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CRLR.C.No.1461 of 2013

AK (CO)

NRA(08/03/2021)