



Bail Slip

The Appellant/Accused, namely N.C.Mahendran S/o.Chandrasekar Accused was directed to be released on bail as per order dated 11.04.2014 in CMP.NO.1/14 IN CRL RC.NO.409/2014 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2021

CORAM :

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

Crl.R.C.Nos.409 & 410 of 2014

N.C.Mahendran

S/o.Chandrasekar

... Accused/ Respondent/Petitioner

Vs.

M.Malarmaran

S/o.Murugesan

...Complainant/Petitioner/Respondent

Prayer in Crl.R.C.No.409 Of 2014: Revision petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order and sentence dated 14.03.2014, directing the petitioner to pay the respondent a compensation of Rs.5,00,000/- and sentencing the petitioner to undergo simple imprisonment for six months made in Crl.R.C.No.15 of 2013 on the file of the XVII Additional Sessions Judge Chennai reversing the order dated 11.03.2012 made in C.C.No.1205 of 2011 on the file of the Metropolitan Magistrate & Fast Track Court-II, Egmore by allowing this Criminal Revision Case.

Prayer in Crl.R.C.No.410 Of 2014: Revision petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 11.03.2014 made in Crl.A.No.197 of 2012 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the order of conviction dated 29.08.2012 made in C.C.No.1205 of 2011 on the file of the Metropolitan Magistrate, Fast Track Court-II at Egmore by allowing this Criminal Revision case.

For Petitioner : Ms.Abino Monisha
for M/s.A.V.Arun

For Respondent : Mr.R.Chakkaravarthy

COMMON ORDER

(The cases have 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 a case of the complainant that the accused borrowed a sum of Rs.8,00,000/- from him for the construction of a house on the promise and assurance that the amount would be returned to the complainant within a period of six months. In order to discharge his liability, the accused had issued a cheque bearing No.272199 dated 23.09.2010 for a sum of Rs.8,00,000/- (Ex.P1), drawn on Standard Chartered Bank, Chennai, Rajaji Salai Branch in favour of the complainant and assured him that the cheque would be honoured on presentation. The complainant believing his words presented the cheque through his banker viz. HDFC Bank, Chennai, Rajaji Salai Branch on 27.09.2010, but the said cheque was dishonoured by the accused banker with an endorsement "insufficient funds" vide bank memo dated 28.09.2010 (Ex.P2). Therefore, the complainant issued a statutory demand notice dated 04.10.2010 (Ex.P3) to the accused by R.P.A.D, which was received by the accused vide postal acknowledgement card dated 05.10.2010 (Ex.P4); the accused despite receiving the legal notice, neither replied nor paid the cheque amount as demanded by the complainant. Therefore, the complainant initiated prosecution by way of private complaint in C.C.No.1205 of 2011 before learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, 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.P4.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, the accused examined his brother as DW1 and however the accused had not marked any documentary evidence to defend his case.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 29.08.2012 in C.C.No.1205 of 2011 had found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced him under Section 255(2) Cr.P.C. and directed him to pay a compensation of Rs.8,00,000/- to the complainant within one month from 29.08.2012, in default to undergo simple imprisonment for a period of one month. Against the said conviction and sentence, the accused had filed an appeal in C.A.No.197 of 2012 and the complainant being not satisfied with the conviction and sentence, filed a petition in CrI.R.C.No.15 of 2013, seeking enhancement of sentence.

7.The C.A.No.197 of 2012 and CrI.R.C.No.15 of 2013 were taken up on the file of the XVII Additional Judge, City Civil



Court, Chennai and by a common order dated 11.03.2014, the learned Sessions Judge, dismissed the C.A.No.197 of 2012 and allowed the CrI.R.C.No.15 of 2013 by setting aside the judgment of the trial Court and modified the the sentence and directed the accused to undergo simple imprisonment for six months and to pay a sum of Rs.5,00,000/- as compensation to the complainant u/s.357(3) Cr.P.C. Aggrieved by the said dismissal order passed by the learned XVII Additional Judge, City Civil Court, Chennai in C.A.No.197 of 2012, the accused preferred the Criminal Revision case in CrI.R.C.No.409 of 2014. Aggrieved against the order passed by the learned XVII Additional Judge, City Civil Court, Chennai, in CrI.R.C.No.15 of 2013, the accused / petitioner preferred a petition in CrI.R.C.No.410 of 2014 under Section 397 read with 401 Cr.P.C.

8.Heard Ms.Abino Monisha, learned counsel appearing for the accused and Mr.R.Chakkaravathy, learned counsel appearing for the complainant.

9.Learned counsel for the accused would submit that admittedly it is a case where the accused / petitioner had issued a cheque for a sum of Rs.8,00,000/- towards security for the loan obtained by his brother (D.W.1) for construction of house and that the Courts below have failed to take into consideration that the accused / petitioner had only stood as a guarantor and the accused having not borrowed any amount and there is no legally enforceable debt and thereby the Courts below committed error in convicting the accused / petitioner. She would further submit that the accused has examined his brother as D.W.1 and that his brother has also stated that he had constructed a house. She would further submit that except the cheque, no other supporting evidence had been let in by the complainant to prove that the consideration was paid to the accused and thereby both the Courts below erred in convicting the accused / petitioner.

10.Per contra, learned counsel for the respondent would submit that the complainant had proved his case by letting in cogent evidence. It is a case where the accused borrowed an amount of Rs.8,00,000/- and in order to discharge the liability, he had issued a cheque to the complainant and the cheque was presented for collection within time and after it was dishonoured, a statutory notice was issued by the complainant and the accused on receipt of the legal notice neither replied nor repaid the amount and the presumption under Section 139 of N.I. Act was in favour of the respondent and it is for the accused to prove his case by letting in evidence in rebuttal, whereas, in this case, it has not been done and hence the trial Court has rightly finding that the complainant has proved his case beyond all reasonable doubt had convicted the accused. He would further submit that the D.W.1 had been examined and no worthwhile statement had been given by the witness to support the case of the accused and thereby the trial Court found the accused guilty and convicted



him as stated above. Since there was no sentence of imprisonment, the complainant filed revision for enhancement of sentence and the Appellate Court modified the sentence and directed the accused to undergo simple imprisonment for six months and to pay Rs.5,00,000/- as compensation. However, he would submit that the complainant has not preferred any petition against modification of compensation.

11. Before advertizing 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.

12. In this case, the accused has not denied his signature in the impugned cheque viz. Ex.P1. This Court perused the cheque and other documents marked by the accused viz. Ex.P1 to Ex.P4 and did not find any suspicious feature in it. The defence of the accused is that the impugned cheque was given only for the purpose of security, which has been misused by the complainant. The accused received the statutory demand notice viz. Ex.P3, but did not choose to give any reply. It is the case of the accused that he had issued the cheque (Ex.P1) dated 23.10.2010 to the complainant for the loan obtained by his brother for constructing the house.

13. It is the case of the complainant that that the accused borrowed a sum of Rs.8,00,000/- from him for construction of house on the promise and assurance that the amount would be returned to the complainant within a period of six months. In order to discharge his liability, the accused had issued a cheque bearing No.272199 dated 23.09.2010 (Ex.P1), and when the complainant presented the cheque through his banker viz. HDFC Bank, Chennai, Rajaji Salai Branch on 27.09.2010, the said cheque was dishonoured by the accused banker with an endorsement "insufficient funds" vide bank memo dated 28.09.2010 (Ex.P2). Therefore, the complainant issued a statutory demand notice dated 04.10.2010 (Ex.P3) to the accused by R.P.A.D, which was received by the accused vide postal acknowledgement dated 05.10.2010 (Ex.P4); the accused despite receiving the legal notice, neither replied nor repaid



the cheque amount as demanded by the complainant. Therefore, the complainant initiated prosecution by way of private complaint in C.C.No.1205 of 2011 before learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, for the offence under Section 138 of the Negotiable Instruments Act, 1881. A presumption is cast under Section 139 of the Negotiable Instruments Act, however the presumption is rebuttable by the accused in this case. In support of his contentions, learned counsel relied on the decision held in APS Forex Services Private Limited vs. Shakti International Fashion Linkers and Others reported in (2020) SCC Online SC 193.

14.In APS Forex Services Private Limited vs. Shakti International Fashion Linkers and Others reported in (2020) SCC Online SC 193, the Hon'ble Apex Court has held that Section 139 of the N.I. Act is an example of reverse onus clause and once the issuance of cheque has been admitted and the signature on the cheque has been admitted, there is always presumption in favour of the complainant as to the existence of a legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence.

15.In this case, as stated above, the complainant has proved his case by letting in cogent evidence. Whereas, the accused has failed to rebut the presumption u/s.139 of N.I.Act to prove his case. Though the accused had examined his brother as D.W.1, nothing is elicited. Further, the evidence of D.W.1 had in fact fortified the fact that the accused had also constructed a house. It is a case of the complainant that the accused had borrowed money towards loan while he was constructing house and that in order to discharge his liability, he had issued a cheque. The trial Court as well as the Appellate Court finding that the accused has not rebutted the presumption found him guilty for the offence under Section 138 of Negotiable Instruments Act and had rightly convicted him. The appeal of the accused was dismissed. However the revision of the complainant was allowed and while confirming the conviction the sentence was modified to six months simple imprisonment and the compensation was modified to Rs.5,00,000/-. This Court finds no infirmity or illegality in the judgments passed by the Courts below.

16.In the result, these Criminal Revision cases stand dismissed as devoid of merits. The conviction and sentence imposed by the Trial Court, which is modified by the Appellate Court shall stand unaltered. The bail bonds stand cancelled. The Trial Court is hereby directed to secure the accused and commit him to prison to undergo sentence and to pay the compensation as ordered by the XVII Additional



Sessions Judge, Chennai in common Judgment and order in Crl.R.C.No.15 of 2013 and C.A.No.197 of 2012 dated 11.03.2014. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

WEB COPY

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kas

To

1.The Metropolitan Magistrate
Fast Track Court-II
Egmore, Chennai

2.XVII Additional Judge
City Civil Court
Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

CRLR.C.Nos.409
& 410 of 2014

AAB (CO)
A.SK(17.06.2021)