



Bail Slip in Crl Rc(MD)No.321 of 2017

The Petitioner herein/ Accused viz Vijayakumar, Son of Muthusamy has been released on Bail, vide this Court's Order dated 10-04-2017, in Crl MP(MD)No.3059/2017 in Crl RC(MD)No.321 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 07.09.2021

Pronounced on : 01.11.2021

CORAM:
THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**
Crl.R.C. (MD)No.321 of 2017

Vijayakumar .. Petitioner/Appellant/
Accused

Vs.

Krishnan .. Respondent

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for the records and set aside the judgment passed by the learned III Additional District and Sessions Judge, Trichy, dated 21.02.2017, in C.A.No.3 of 2016, by confirming the judgment dated 28.07.2015, in C.C.No.175 of 2013, on the file of the Judicial Magistrate Court, Musiri, and acquit the petitioner.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondent : Mr.G.S.Asok Adhithyan

ORDER

The present Criminal Revision Case has been filed against the concurrent findings made in C.C.No.175 of 2013, dated 28.07.2015, on the file of the Judicial Magistrate Court, Musiri, and in C.A.No.3 of 2016, dated 21.02.2017, on the file of the III Additional District and Sessions Judge, Trichirappalli.

2.The petitioner is an accused in C.C.No.175 of 2013, on the file of the Judicial Magistrate Court, Musiri. The respondent filed the said case by way of private complaint alleging that the petitioner has committed an offence punishable under Section 138 of the Negotiable Instruments Act. The trial Court, by judgment dated 28.07.2015, found the accused guilty under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for six months and to pay a compensation of



3.Challenging the said conviction and sentence, the revision petitioner filed an appeal in C.A.No.3 of 2016. By judgment dated 21.02.2017, the learned III Additional District and Sessions Judge, Trichirappali, dismissed the appeal, confirming the conviction and sentence imposed by the trial Court.

4.Aggrieved over the same, the revision petitioner is before this Court with this Criminal Revision Case.

5.The case of the respondent is as follows:-

Both the respondent and the petitioner are close friends. On 10.08.2013 the petitioner received a hand loan of Rs.8,00,000/- from the respondent. While at the time of receiving the said loan, after made assurance as the same would be repaid within a period of one month, the petitioner issued a cheque [Ex.P.1] drawn on State Bank of India, Kattuputhur Branch. On 01.10.2013 when the said cheque was presented for collection in the same Bank, the same was dishonoured by the Bank as an endorsement 'funds insufficient' [Ex.P.2]. Thereafter, a legal notice [Ex.P.3] required under Section 138 of the Negotiable Instruments Act, was issued by the respondent to the petitioner on 30.10.2013. Having received the same under acknowledgement [Ex.P.4], the accused did not send any reply in respect of allegation levelled against him. Thereafter, the respondent filed the said private complaint.

6.In order to prove his case, on the side of the respondent/complainant, the complainant himself was examined as P.W.1 and four documents were exhibited as Exs.P.1 to P.4.

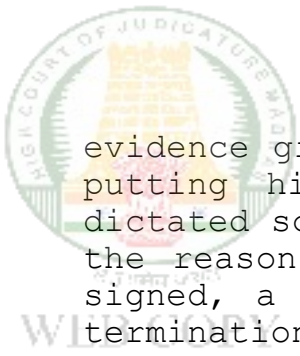
(i) Ex.P.1 is the disputed cheque.

(ii) Ex.P.2 is the return memo issued by the State Bank of India, Kattuputhur Branch.

(iii) Ex.P.3 is the legal notice issued by the complainant's Advocate.

(iv) Ex.P.4 is the acknowledgment card, dated 11.12.2013.

7.When the above incriminating materials were put to the accused, he denied the same as false. On the other hand, the revision petitioner/accused himself was examined as D.W.1 and he states that before the occurrence, both himself and the complainant are having loan transactions, wherein he paid Rs.2,10,000/- to the complainant, for redeeming the gold jewels pledged by him. Thereafter, the complainant has also received Rs.95,000/- from the accused by pledging gold jewels, viz., Rs.12,000/- as cost for one sovereign of gold and thereafter, he did not redeem the same. In this regard, a dispute arose and as a result of which, he lodged a complaint before the Kattuputhur Police Station, wherein, during enquiry, the Police obtained his signature in two blank cheques and also in Rs.20/- Non-Judicial Stamp Paper. It is the further



evidence given by the revision petitioner that while at the time of putting his signature in the stamp paper, the Police Officers dictated some terms and the same was reduced into writing by him for the reason that the Police Officers threatened him, if he has not signed, a false case has been foisted against him, which leads to termination of Conductor post holding by him in the Tamil Nadu State Transport Corporation.

7.1. Apart from that, on the side of the accused, one Perumal, who is the then Special Sub-Inspector of Police, Kattuputhur Police Station, was examined as D.W.2. He gave evidence as, Ex.D2 is the copy of the receipt issued in respect of Petition No.150 of 2013. According to him, in respect of the said petition, one Muthukumarasamy, the then Special Sub-Inspector of Police, conducted enquiry and as of now, the same has been closed.

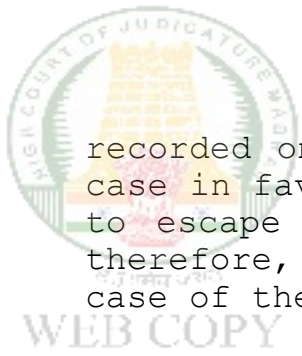
7.2. Apart from those witnesses, one Saravanan, the then Branch Manager of Trichy Cantonment Branch, Tamil Nadu State Transport Corporation, had given evidence as D.W.3. He gave evidence as on 10.08.2013, the accused came to the Office at 11.15 a.m. for attending duty and after attending duty, on 11.08.2013 around 02.45 p.m., he has remitted the collection amount. The receipts in respect of attending the duty and remittance of collection amount, are marked as Ex.D.3 series.

8. Having considered all the above, the trial Court found the accused guilty and accordingly, punished him. Against which, the petitioner has filed an appeal and the same has also been dismissed. That is how the petitioner is before this Court with this criminal revision.

9. I have heard Mr.T.J.Ebenezer Charles, learned counsel appearing for the petitioner and Mr.G.S.Asok Adhithyan, learned counsel appearing for the respondent.

10. The learned counsel appearing for the petitioner would submit that from Exs.D.1 to D.3, it has been clearly established by the accused that the cheque in question was not at all issued to the complainant and as a matter of fact, the same was obtained by the complainant by coercion with the help of Police Officers attached to the Kattuputhur Police Station. The learned counsel would further submit that Ex.D.2, which is a file relates to Petition No.150 of 2013, probabalise the fact that the cheque in question was obtained only in the Police Station and accordingly, it is necessary to hold that the cheque in question was not issued to discharge the legally enforceable debt.

11. The learned counsel appearing for the respondent would stoutly oppose this revision. It is the contention raised by the learned counsel appearing for the respondent that the evidence

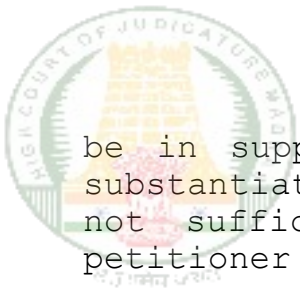


recorded on the side of the petitioner, does not prove *prima facie* case in favour of the accused and probabalise his defence. In order to escape from the liability, the accused contended as above and therefore, the same cannot be taken into account for accepting the case of the petitioner.

12.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

13.It is the main contention of the revision petitioner that the cheque pertains to this case was obtained by the respondent in Kattuputhur Police Station. In order to substantiate the same, he examined one Perumal, the then Sub-Inspector of Police attached to Kattuputhur Police Station as D.W.2. In respect of enquiry conducted in Petition No.150 of 2013, he had given evidence as, during the relevant point of time, in respect of the dispute having by the petitioner and the respondent, an enquiry was conducted in the Police Station and the record pertains to the said enquiry has been marked as Ex.D2. Now, on going through Ex.D.2 series, it is seen that the complaint has been lodged only in respect of misappropriation of jewels and in respect of its consequences. Further, the said enquiry has been conducted on 08.08.2013, though the cheque pertains to the case is dated 10.09.2013, which is subsequent to the said enquiry. On going through the cross-examination of D.W.2, it appears that nothing was suggested on the side of the accused, particularly, about the issuance of the said cheque. In the absence of particular entry in the related document, this Court cannot conclude the case that the alleged cheque was obtained from the petitioner by coercion. Therefore, I am of the considered view that the stand taken by the accused that the cheque pertains to the case has been obtained in the respondent Police Station, has not been proved by way of examining D.W.2.

14.One another plea taken by the accused before the trial Court is that, the date on which the alleged transaction has been made, i.e., 10.08.2013, the petitioner attended duty and therefore, it is not at all possible to avail loan on that date. In this regard, one Saravanan, who is the Branch Manager, Trichy Cantonment Branch, Tamil Nadu State Transport Corporation, was examined as D.W.3. It is true, in his evidence, he has stated that on 10.08.2013 at 11.15 a.m., the petitioner/accused attended duty and after attending duty, he remitted the collection amount on 11.08.2013 at 02.45 p.m. Now, on scrutinizing the said witness with the other facts, it is seen that both the petitioner and the respondent are residing in Musiri, which is situated near to Trichy. All are aware the travel time between Trichy and Musiri is about one hour. Therefore, in the said circumstances, it is possible for the accused that after availing loan in the morning hours, he travelled to Trichy and attended duty at 11.15 a.m. Therefore, the evidence given by D.W.1 to D.W.3 may



be in support of the defence taken by the accused, in order to substantiate the said evidence, the documents relied on by him are not sufficient to hold that the stand taken by the revision petitioner is genuine one.

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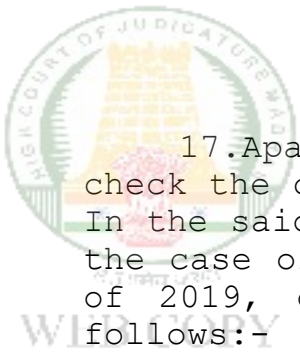
15. At this juncture, in the judgment reported in **2021 (2) CTC 357 [Kalamani Tex and others Vs. P.Balasubramanian]**, our Hon'ble Apex Court has held as follows:-

'The Statute mandates that once the signature (s) of an Accused on the Cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the Accused to discharge the presumption imposed upon him. This point of law has been crystallized by this Court in **Rohitbhai Jivanlal Patel v. State of Gujarat, 2019 (2) MWN (Cr.) DCC 26 (SC) : 2019 (18) SCC 106, p.18**, in the following words:

'In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the Trial Court proceeded to question the want of evidence on the part of the Complainant as regards the source of funds for advancing loan to the Accused and want of examination of relevant Witnesses who allegedly extended him money for advancing it to the Accused. This approach of the Trial Court had been at variance with the Principles of Presumption in law. After such presumption, the onus shifted to the Accused and unless the Accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the Complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the Appellant-Accused.....'

15. Once the 2nd Appellant had admitted his signatures on the Cheque and the Deed, the Trial Court ought to have presumed that the Cheque was issued as consideration for a legally enforceable debt.'

16. Therefore, in view of the above, once the signature found in the cheque is admitted, the trial Court ought to have presumed that the cheque was issued for legally enforceable debt.



17. Apart from that, the present revision has been filed to check the correctness of the judgments rendered by the Courts below. In the said circumstances, in respect of revisional jurisdiction, in the case of **Bir Singh Vs. Mukesh Kumar** [Criminal Appeal Nos.230-231 of 2019, dated 06.02.2019], our Hon'ble Apex Court has held as follows:-

'19. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

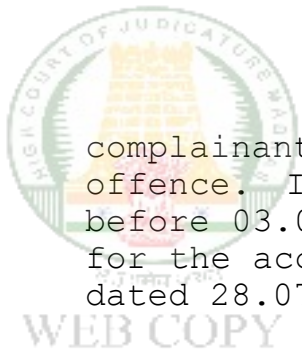
20. As held by this Court in *Southern Sales and Services and Others vs. Sauermilch Design and Handels GMBH 2*, it is a well established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative.'

18. Further, in the case of **N.Karthikeyan vs. M.Daisy Rani** reported in **2020 (1) MWN (Cr.) DCC 187 (Mad)**, this Court has held as follows:-

'11. This Court finds no reason much less valid reason to interfere with the concurrent findings so rendered by the Courts below. Further, it is settled law that while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence like a Court of appeal, unless it is shown that the findings on facts arrived at by the Courts below are on the face on it perverse.'

19. Therefore, without seeing any perversity or gross injustice in the judgments rendered by the trial Court and the first appellate Court, this Court cannot interfere with the findings rendered by the Courts below. Accordingly, this Criminal Revision is dismissed and the judgment of the trial Court, which was confirmed by the first appellate Court, is confirmed,

20. Since the prosecution under Section 138 of the Negotiable Instruments Act is quasi civil in nature, the Parliament has thought it fit to permit compounding of the offence under Section 147 of the Negotiable Instruments Act. Instead of sending the accused to prison, this Court is of the view that if the accused deposits Rs.8,00,000/- towards the cheque amount and another sum of Rs.1,10,500/- as compensation and costs to the credit of C.C.No.175 of 2013, before the Judicial Magistrate Court, Musiri, on or before 06.02.2022, the Magistrate shall disburse the amount to the



complainant if he is alive or to his legal heirs and compound the offence. If the amount of Rs.9,10,500/- is not deposited on or before 03.01.2022, the trial Court shall issue warrant of commitment for the accused to undergo the sentence imposed upon him by judgment dated 28.07.2015, in C.C.No.175 of 2013.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The III Additional District and Sessions Judge,
Trichy.

2.Do through The Principal District Judge,
Trichy.

3.The Judicial Magistrate,
Musiri.

4.Do through The Chief Judicial Magistrate,
Trichy.

5.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.S.ASOK ADHITHYAN, Advocate (SR-33498[F] dated
01/11/2021)

CrI.R.C.(MD)No.321 of 2017
01.11.2021

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