

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.584 OF 2005

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the judgment dt.17.06.2004 in C.C.No.538 of 1999 passed by the VI Metropolitan Magistrate, Hyderabad filed under Section 138 of N.I. Act whereby the accused was found guilty and against which he preferred an appeal in Crl.A.No.183 of 2004 dt.31.03.2005 which ended in dismissal by the III Addl.Metropolitan Sessions Judge, Hyderabad.

2. Aggrieved by the judgment in Crl.A.No.183 o 2004, the present revision is filed by the petitioner.

3. The first respondent is M/s Somu Finance, a registered partnership firm filed complaint against the petitioner under Section 200 Cr.P.C. for the offence punishable under Section 138 of N.I.Act alleging that the petitioner borrowed an amount of Rs.7,50,000/- on 20.02.1997 and executed necessary document agreeing to repay the debt. Despite demands, the petitioner did not repay the debt due and issued Ex.P-9 cheque bearing No.354738 dt.5.4.1999 for Rs.2,50,000/- drawn on State Bank of India, Secunderabad branch in lieu of discharge of part of the debt due. In turn, the first respondent deposited cheque with their banker Vasavi Co-operative Urban Bank Limited, Sanathnagar branch for collection, and it was returned as dishonoured by the payee bank with an endorsement 'insufficient funds' and issued a cheque return memo Ex.P-10, dt.8.4.1999.

4. A legal notice dt.19.4.1999 was issued calling upon the petitioner to pay the debt covered by dishonoured cheque vide Ex.P-11 and the same was returned with postal endorsement as not claimed vide Ex.P-12, again notice vide Ex.P-13 was sent under certificate of posting and issued letter dt.29.5.1999 marked as Ex.P-14. Notice was returned with postal endorsement as not claimed as the accused intentionally avoided to receive the notice and failed to pay the amount covered by cheque. Thus, the petitioner committed an offence punishable under Section 138 of N.I. Act.

5. The case was taken on file for the offence punishable under Section 138 of N.I. Act by the learned magistrate and after securing the presence of the accused complied the procedure under Section 207 Cr.PC., examined the accused under Section 251 Cr.P.C., explained the gist of accusation for the offence punishable under Section 138 of N.I. Act, he denied the same and claimed to be tried.

6. During trial, on behalf of the complainant PW-1 was examined and marked Exs.P-1 to P-15 and after closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating circumstances that appeared against him, he denied the same and examined himself as DW-1 and marked Exs.D-1 to D-4.

7. Upon hearing argument of both the counsel, the trial court found the accused guilty for the offence punishable under Section 138 of N.I. Act, convicted and sentenced him to undergo imprisonment for a period of six months while giving set off the remand period under Section 428 Cr.P.,C.

8. Aggrieved by the conviction and sentence under impugned calendar and judgment, the petitioner preferred an appeal in

CrI.A.No.183 of 2004 which ended in dismissal by judgment dt.31.0.2005 confirming the conviction and sentence passed by the trial Court under impugned calendar and judgment.

9. Aggrieved by the confirmation of sentence, conviction and judgment of the appellate court, the present revision is filed on various grounds.

10. During hearing, learned counsel for the petitioner did not appear and represent the matter. However, in criminal revision case, this court even in the absence of counsel, can peruse the record and pass appropriate orders. Therefore, having no other alternative, this court has to dispose of the revision by verifying the record available as per decision in NISHA SHARMA AND OTHERS v. VINOD KUMAR SHARMA¹

11. It is the case where the revision petitioner allegedly committed an offence punishable under Section 138 of N.I. Act. Both the courts recorded a concurrent fact finding that the accused committed an offence punishable under Section 138 of N.I. Act and such fact concurrent fact finding recorded by the courts below, this court cannot interfere normally with the concurrent fact findings and they are based on proper appreciation of evidence.

12. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

13. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may

¹ 1990 Cr.L.J. (NOC) 57 (Delhi)

not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

12. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

13. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

14. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in *STATE OF WEST BENGAL v. TULSIDAS*². The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in *PRAHLAD v. EMPORER*³. Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

² (1964) 1 Cr.L.J. 443 (SC)

³ 48, Cr.L.J 173, 174 (Pat)

15. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

16. Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in *S.P.S. JAYAM & CO. v. NEHRUSADAN*⁴.

17. In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in *BANSILAL v. LAXMAN*⁵.

18. In the present case on hand, the trial court and appellate court recorded concurrent fact finding that the petitioner issued a cheque for

⁴ 1977 Cr.L.J. 1101

⁵ (1986) 3 SCC 445

Rs.2,50,000/- without sufficient funds to the credit of his account with the State Bank of India, Secunderabad branch and when it is returned, a notice was issued, but the petitioner intentionally evaded to receive the notice while admitting that the address shown in the notice is correct address and therefore, presumption under Section 27 of General Clauses Act to be drawn and accordingly, the trial court drawn the presumption and concluded that the petitioner complied the requirement under Section 138(b) of N.I. Act. But, still not paid the amount covered by cheque even after his appearance before the trial Court within 15 days. Therefore, both the courts below recorded a concurrent fact finding that the petitioner committed an offence punishable under Section 138 of N.I. Act. Hence, such concurrent fact finding cannot be interfered with by this court by exercising power under Section 397 and 401 Cr.P.C. and there are no grounds to interfere with the findings of both the courts below and thereby the revision is devoid of merit and is liable to be dismissed.

19. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:17-08-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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