

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09/11/2018

Pronounced On: 15/11/2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1060 of 2013

S.Ravichandran

.. Petitioner

Vs

P.Nagarajan

.. Respondent

Criminal Revision preferred under Section 397 read with 401 of Cr.P.C. praying to call for the records in Judgment dated 07.08.2013 made in C.A.No.8 of 2013 on the file of the Principal District and Sessions Court, Tirppur confirming the judgment of conviction dated 07.02.2013 made in C.C.No.70 of 2004 on the file of the Judicial Magistrate Court No.I, Udumalpet and set aside the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : Mr.K.R.Samratt

O R D E R

For the sake of convenience, the parties will be referred to as the complainant and the accused. It is the case of the complainant that he runs an electrical shop and the accused who runs a waste paper shop nearby was his good friend; the accused approached him on 20.08.2003 and sought a hand loan of Rs.2,00,000/- for his urgent need; he told the accused that he will make arrangements; he gave Rs.2,00,000/- on 27.08.2003 to the accused as hand loan, towards which, on the same day, the accused gave a post dated cheque dated 05.09.2003 bearing No.400135 drawn on Indian Bank, Udumalpet branch for Rs.2,00,000/- (Ex.P1); he deposited the cheque on 13.10.2003 in his account with Catholic Syrian Bank, Udumalpet branch; the cheque was returned unpaid with the endorsement "exceeds arrangements"; vide return memo Ex.P3; the complainant issued statutory notice dated 23.10.2003 (Ex.P4), which was received by the accused on 03.11.2003 (acknowledgment card-Ex.P6); the accused did not make the payment, but however, sent a reply notice dated 20.11.2013(Ex.P7). Hence, the complainant launched a prosecution in C.C.No.70 of 2004 before the Judicial Magistrate No.I, Udumalpet under Section 138 of the Negotiable

Instruments Act against the accused. On summons, the accused appeared and he was questioned under Section 251 Cr.P.C. The accused denied the accusation. The complainant examined himself as PW1 and marked seven exhibits. The accused was questioned under Section 313 Cr.P.C. and he denied the allegations. The accused examined himself as DW1 and one Alikhan as DW2 and marked a receipt Ex.D1. After considering the evidence on record, the trial Court, by judgment dated 07.02.2013, convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year rigorous imprisonment and pay a fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment. The accused appealed to the Court of Session in C.A.No.8 of 2013, which has been dismissed on 07.08.2013, aggrieved by which, the accused is before this Court.

2.Heard the learned counsel for the accused and the learned counsel for the de facto complainant.

3.Learned counsel for the accused submitted that the impugned cheque was not issued to the complainant, but the same was issued to one Iqbal, who in turn, had handed over the same to the complainant, based on which, a false case has been filed by the complainant. He further submitted that on 27.08.2003, the accused was not in Udumalpet, but was in Chennai and stayed in room No.106 of Bismi Stay Home, to prove which, Ali Khan (DW2) the Manager of Bismi Stay Home was examined and the cash bill dated 27.08.2003 was marked as Ex.D1. Therefore, learned counsel contended that both the Courts have failed to appreciate the evidence on record in the right perspective and hence, the conviction and sentence deserves to be set aside.

4.Per contra, learned counsel for the complainant submitted that both the Courts have appreciated the evidence on record properly and there is no perversity in the appreciation of evidence, for this Court to interfere in exercise of revisional powers.

5.This Court gave its anxious consideration to the rival submissions.

6.The revisional power under Section 397 Cr.P.C. can be exercised for satisfying as to the correctness, legality or propriety or irregularity in the orders passed by the trial Court and the first appellate Court. Normally, this Court should not embark upon reappreciation of evidence, in exercise of revisional jurisdiction, especially in cases, where the trial Court and the appellate Court have appreciated the evidence and have given concurrent findings. Of course this Court, in exercise of revisional powers can reappreciate the evidence, if it is shown that there has been gross misappreciation and or misinterpretation of the evidence on record.

7. In this case, the accused has admitted the execution of the impugned cheque and therefore, the burden under Section 139 of the Negotiable Instruments Act should have to be discharged by him and he has to satisfactorily establish that the impugned cheque was not issued in discharge of the alleged liability. Unlike the complainant, it is not necessary for the accused to prove his case beyond reasonable doubt. It would suffice, if he shows by preponderance of probability that there was no legally enforceable debt. Apart from merely deposing that the impugned cheque was issued to Iqbal, the accused had not produced any other document or evidence in support of this assertion.

8. As regards the claim of alibi, it is a fact relevant under Section 11 of the Evidence Act. In order to show that the accused was not in Udumalpet on 27.08.2003, one Ali Khan, Manager of Bismi Stay Home was examined as DW2 and through him, a cash bill dated 27.08.2003 was marked as Ex.D1. In the cross-examination, Ali Khan has stated that he does not have the guest register, which will only reflect the complete details and signature of the guests who had stayed in the said lodge. In the cross-examination by the complainant, Ali Khan has stated that he does not know any other details with regard to Ex.D1. In the reply notice dated 20.11.2003 (Ex.P7), the accused has merely stated that he was away from Udumalpet, but had not specifically stated that he was in Chennai on 27.08.2003. The trial Court and the appellate Court have thoroughly considered the evidence on record and have rejected the theory of alibi, put forth by the accused. This Court does not find any perversity in the appreciation of evidence by the two Courts warranting interference in revision.

9. In the result, this petition is devoid of merits and is dismissed. The petitioner is directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order, failing which, the trial Court shall issue warrant for securing his presence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

TO:

1.The Judicial Magistrate,
No.I, Udulmalpet.

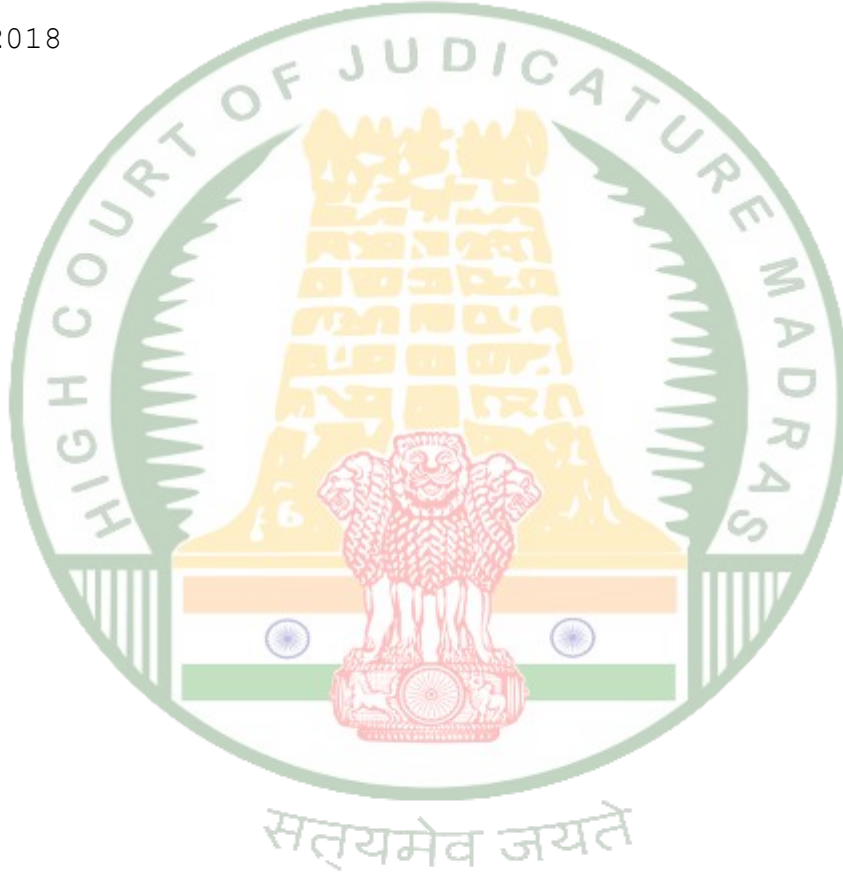
2.The Principal District and Sessions Judge, Tiruppur.

+1cc to Mr.P.Saravana Sowmiyan, Advocate sr.no.78519

+1cc to Mr.K.R.Samratt, Advocate sr.no.78246

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