

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2019

PRONOUNCED ON : 06.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1047 of 2018

1.Sri Angalamman Traders,
No.414, Nehru Street,
Tindivanam,
Villupuram District.

2.S.Kalaiselvi,
W/o.Sivakumar,
Proprietrix,
Sri Angalamman Traders,
No.414, Nehru Street,
Tindivanam,
Villupuram District.

.. Petitioners

Vs

M/s.Abijith Traders,
Rep. by its Proprietor,
B.Balasubramanian,
No.57, Varadha Muthiappan Street,
Chennai 600 001.

.. Respondent

Criminal Revision preferred under Section 397 Cr.P.C. to set aside the order dated 29.08.2018 passed by the IV Additional Sessions Judge, City Civil Court, Chennai in C.A.No.59 of 2017 confirming the judgment of conviction and sentence dated 24.02.2017 passed by the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai in C.C.No.39 of 2016.

For Petitioners : Mr.P.V.Selvarajan

For Respondent : Mr.W.M.Abdul Majeed

O R D E R

This Criminal Revision Petition has been preferred to set aside the judgment and order dated 29.08.2018 passed by the IV Additional Sessions Judge, City Civil Court, Chennai in C.A.No.59 of 2017 confirming the judgment and order dated 24.02.2017 passed by the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai in C.C.No.39 of 2016.

2. For the sake of convenience, the petitioners and the respondent will be referred to as the accused and the complainant respectively.

3. It is the case of the complainant that, he is a dealer in rice and chillies and during the course of his business, the accused purchased rice bags from him under various bills, to discharge which, the accused issued a cheque dated 15.08.2015 for Rs.14,21,536/- drawn on Karur Vysya Bank; when he presented the cheque on 05.11.2015, it was returned unpaid with the endorsement "funds insufficient"; he issued a statutory demand notice (Ex.P6), for which, the accused sent a reply notice (Ex.P8), but did not make any payment. Hence, the complainant initiated a prosecution before the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai in C.C.No.39 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "NI Act").

4. On the appearance of the accused, she was questioned under Section 251 Cr.P.C. and she denied the accusation. To prove the case, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P8. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against her, she denied the same. The accused examined herself as D.W.1 and marked her school certificate Ex.D1 to show that she had studied only up to 5th standard.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.02.2017 in C.C.No.39 of 2016, convicted the accused of the offence under Section 138 of the NI Act and sentenced her to undergo 6 months simple imprisonment and further directed to pay the cheque amount of Rs.14,21,536/- as compensation to the complainant under Section 357(3) Cr.P.C., in default to undergo 2 months simple imprisonment. The appeal in C.A.No.59 of 2017 filed by the accused has been dismissed by the IV Additional Sessions Court, Chennai on 29.08.2018, challenging which, the accused has filed the present revision petition under Section 397 Cr.P.C.

6. Heard Mr.P.V.Selvarajan, learned counsel for the accused and Mr.W.M.Abdul Majeed, learned counsel for the complainant.

7. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

7.1. While exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659]:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of

revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

7.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the Supreme Court formulated the following question of law :

“(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any

jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"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 & 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. The answer to the first question is therefore, in the negative."

8. Learned counsel for the accused submitted that the accused was an illiterate lady and that, she had given blank cheques to the complainant, which has been misused by him.

9. In this case, the complainant has marked invoices (Ex.P3 Series) and the delivery bills to show that rice bags were supplied to the accused. The accused has not disputed her signature in the cheque nor her signature in Ex.P3 Series. According to the accused, even the invoices (Ex.P3 Series) were blank ones, but still, she and her brothers have signed in them. This defence of her's appears very flimsy. In the cross-examination, she has accepted that the invoices accompanying the rice bags will be in duplicate and that she will retain the original and return the duplicate with signature to the delivery boy. However, she did not produce the invoice copy given to her, in order to show that Ex.P3 Series was unfilled. Even in the reply notice (Ex.P8) issued by her, she had not taken any such defence. On the contrary, she has stated that she had not issued any cheque to the complainant. 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], yet, the accused in this case had failed to do even that.

10. It is seen that the accused has deposited Rs.7,10,768/- (50% of Rs.14,21,536/-) in the trial Court. Taking this into consideration, this Court is of the view that interests of justice will be served, if the substantive sentence of 6 months simple imprisonment is reduced to 3 months simple imprisonment.

In the result, this revision petition is partly allowed. The conviction under Section 138 of the NI Act is confirmed, but the substantive sentence of 6 months simple imprisonment is reduced to 3 months simple imprisonment. The default sentence for non-payment of the compensation amount is also reduced from 2 months simple imprisonment to 1 month simple imprisonment. The trial Court is directed to disburse the amount deposited by the accused to the complainant.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Gya

To

1.The IV Additional Sessions Judge,
City Civil Court, Chennai.

2.The Metropolitan Magistrate,
Fast Track Court-IV, George Town, Chennai.

3. The Chief Metropolitan Magistrate,
Egmore, Chennai

Copy To

The VIII Metropolitan Magistrate, Egmore

+2ccs to Mr.W.M.Abdul Majeed, Advocate SR.No.77104

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EV(CO)

GMV(23/09/2019)

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