

Bail Slip

The Appellant/Accused, namely Dhinakar S/o. Viswanathan ,
Petitioner who was released on bail on 30.08.2012 and made
in CRL MP.NO.1/12 IN CRL RC.NO.1061/2012 on the file of
this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH

Crl.R.C.No.1061 of 2012

Dhinakar ... Petitioner/Accused

Vs.

Senthil Kumar ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401
Cr.P.C., to set aside the judgment and order dated
30.05.2005 passed in S.T.C.No.4873 of 2003 on the file of
the Judicial Magistrate Court No.I, Mayilladuthurai,
confirmed by the judgment and order dated 29.04.2010 passed
in C.A.No.46 of 2005 on the file of the Sessions Court,
Nagapattinam.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Notice served

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O R D E R

This criminal revision has been filed seeking to set
aside the judgment and order dated 30.05.2005 passed in
S.T.C.No.4873 of 2003 on the file of the Judicial
Magistrate Court No.I, Mayilladuthurai, confirmed by the
judgment and order dated 29.04.2010 passed in C.A.No.46 of
2005 on the file of the Sessions Court, Nagapattinam.

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

3. The facts of the case in a nutshell are as under:

3.1 It is the case of the complainant that the accused borrowed a sum of Rs.1,50,000/- and in discharge of the liability, he accused gave a cheque dated 08.09.2003 bearing No.0603366 drawn on Bank of Madura, Mayiladudhurai, for the said amount, which, when presented for clearance, was returned unpaid with the endorsement "Funds Insufficient" on 15.09.2003. Hence, the complainant issued a statutory demand notice dated 25.09.2003 (Ex-P3), which was received by the accused on 30.09.2003. Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.4873 of 2003 on the file of the Judicial Magistrate Court No.I, Mayilladuthurai, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

3.2 Before the trial Court, the complainant examined himself as PW1 and Chidambaram, Branch Manager, Bank of Madura, where, the accused was having his account, as PW2 and marked four exhibits.

3.3 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, no witness was examined nor any document marked.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.05.2005 in S.T.C.No.4873 of 2003, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo three months rigorous imprisonment and pay a fine of Rs.1000/-, in default to undergo one month simple imprisonment and further pay a sum of Rs.1,000/- as compensation to the complainant, in default to undergo one month simple imprisonment.

3.5 The appeal in C.A.No.46 of 2005 filed by the accused was dismissed by the Sessions Court, Nagapattinam, on 29.04.2010.

3.6 Challenging the concurrent findings of fact by the Courts below, the accused has preferred the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.Veerasekaran, learned counsel for the accused. Notice has not been served on the complainant.

5. The learned counsel for the accused submitted that the accused has died on 17.09.2017 and submitted a copy of the death certificate of the accused.

6. The death of the accused will not abate the revision petition when the same is admitted. Therefore, this Court carefully perused the evidence on record.

7. At this juncture, it may be necessary to state here that, 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.¹:

"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."

8. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in *Bir Singh Vs. Mukesh Kumar*², wherein, the following question of law was formulated:

"(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"

9. The answer of the Supreme Court to the aforesaid question of law 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."

10. The learned counsel for the accused contended that the complainant has not proved the debt and the impugned cheque was drawn on Bank of Madura, which was merged with ICICI Bank and therefore, the entire prosecution was improper.

11. The complainant (PW1) has examined Chidambaram (PW2), the Manager of ICICI Bank, who has stated that, in the year 2002, Bank of Madura was merged with ICICI Bank. However, the cheque in this case was returned on the ground of insufficiency of funds.

12. As regards the debt, in the cross-examination, the complainant (PW1) has stated that he had sold 400 bags of grains at Rs.380/- per bag and he had given that money to the accused as loan, on 05.08.2003.

13. Thus, when there are prima facie materials to show that the loan was given, then, the burden under Section 139 of the NI Act, shifts on the accused, which the accused can discharge even by preponderance of probability as held by the Supreme Court in *Rangappa Vs. Sri Mohan*³. However, in this case, the accused has not discharged the said burden even by preponderance on probability.

14. In view of the above, this Court does not find any infirmity or perversity in the concurrent findings of fact by the Courts below, warranting interference.

In fine, this criminal revision is dismissed as being devoid of merits.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

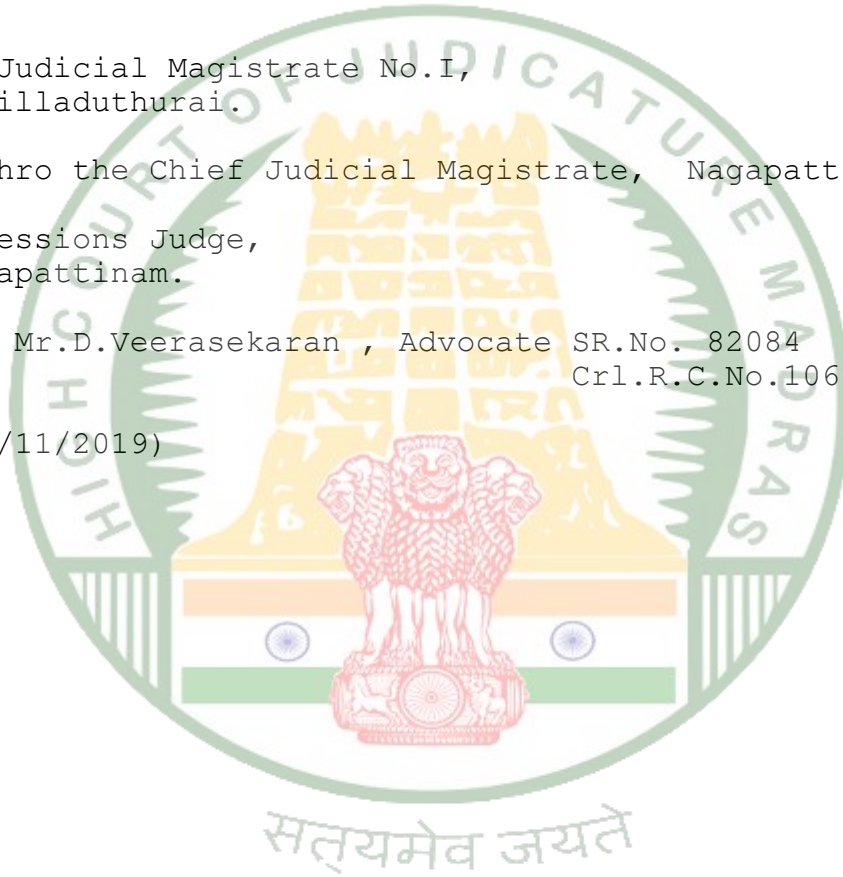
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To

1. The Judicial Magistrate No.I,
Mayilladuthurai.
2. Do thro the Chief Judicial Magistrate, Nagapattinam.
- 3.The Sessions Judge,
Nagapattinam.

+1cc to Mr.D.Veerasekaran , Advocate SR.No. 82084
Cr1.R.C.No.1061 of 2012

ssd
A.SK(08/11/2019)



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