

Bail Slip

The Appellant/Accused viz R.Jawahar S/o.Rajamanickam was released on bail by this Court order dated 05.09.2012 made in M.P.No.1 of 2012 in Cr1.R.C.No.1084/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2019

PRONOUNCED ON : 06.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1084 of 2012

R.Jawahar .. Petitioner/Accused

Vs

M.J.Raju .. Respondent/Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the judgment and order dated 12.07.2012 passed by the District and Sessions Judge, Tiruvarur in C.A.No.90 of 2008 confirming the conviction, imposition of fine and reducing the sentence by judgment and order dated 27.11.2008 passed by the Judicial Magistrate, Tiruvarur in C.C.No.521 of 2005.

For Petitioner : Ms.Greetha Senthilkumar

For Respondent : Mr.K.Sridhar

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 12.07.2012 passed by the District and Sessions Judge, Tiruvarur in C.A.No.90 of 2008 confirming the conviction, imposition of fine and reducing the sentence by judgment and order dated 27.11.2008 passed by the Judicial Magistrate, Tiruvarur in C.C.No.521 of 2005.

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

3.It is the case of the complainant that, the accused is his brother-in-law (his wife's sister's husband) that on 01.02.2002, he borrowed Rs.2,70,000/- as loan, towards which, he (accused) issued a cheque dated 31.01.2005 (Ex.P1), which,

when presented by the complainant on 18.05.2005, was returned with the endorsement "account closed"; the complainant issued a statutory demand notice dated 21.05.2005 (Ex.P4), for which, the accused issued a reply notice dated 30.05.2005 (Ex.P5) repudiating the debt; hence, the complainant initiated a prosecution in C.C.No.521 of 2005 before the Judicial Magistrate, Tiruvarur under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

4.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

5.To prove the case, the complainant examined himself as P.W.1 and marked Exs.P1 to P7. He also examined Rajendran (P.W.2), Manager of Lakshmi Narayana Co-operative Bank, where, he was having his account and where the impugned cheque was presented for clearance and Amirtharaj (P.W.3), Manager of Tamil Nadu Mercantile Bank, where the accused was having his account. The accused examined his brother-in-law Senthil as D.W.1. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.11.2008 in C.C.No.521 of 2005, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and pay fine of Rs.5,000/- in default, to undergo three months simple imprisonment. The appeal in C.A.No.90 of 2008 that was filed by the accused was partly allowed on 12.07.2012 by the District and Sessions Court, Tiruvarur, by confirming the conviction, but reducing the sentence of simple imprisonment from one year to nine months. Challenging the concurrent findings of the two Courts below, the accused has preferred the present criminal revision under Section 397 read with 401 Cr.P.C.

7.Heard the learned counsel for the accused and the complainant.

8.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."

8.1. 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 reappraise 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."

8.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the 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"

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."

9.The complainant, who examined himself as P.W.1, has proved the minimum facts with regard to the giving of the loan, issuance of the impugned cheque by the accused, its dishonour on the ground "account closed", issuance of the statutory demand notice and the failure of the accused to comply with the demand.

10.It is the defence of the accused that the complainant and the accused were doing business in the year 1992, the complainant had introduced the accused to Tamil Nadu Mercantile Bank and had an account opened and had retained signed, but blank cheque books in the year 1992; there was a dispute between the complainant and the accused in the year 2005 and the complainant has misused the cheque that was given in the year 1992 and has filed the present prosecution.

11.Learned counsel for the accused submitted that the complainant has not stated about the date on which, he had given the loan to the accused in the statutory demand notice. Only after the accused repudiated the debt, the complainant has stated that the loan was given on 01.02.2002.

12.In the opinion of this Court, this by itself cannot be said to be fatal to the case of the complainant, especially when the accused has not denied his signature in the cheque. It may be relevant to state here that the complainant has examined Amirtharaj (P.W.3), Manager of the accused bank. In the cross-examination, Amirtharaj (P.W.3), has stated that the account was closed in the year 2001. This shows that the accused has issued the impugned cheque knowing full well that the account was closed. However, it is the contention of the accused that the impugned cheque was given to the complainant in the year 1992, when the account was opened and that has been misused in the year 2005 by the complainant. This defence appears to be too large a pill for this Court to swallow.

13.A perusal of the impugned cheque shows that there is no patent discrepancy in the writings and the signature thereon. Senthil (D.W.1), who was examined by the accused, is the brother-in-law of the complainant and the accused. In the chief-examination, Senthil (D.W.1), has stated that the accused had not taken the loan of Rs.2,20,000/- on 01.02.2002 and that, the impugned cheque was given to the complainant in the year 1992. However, in the cross-examination, he has stated that he went abroad in the year 2004, from where, he wrote a letter to the complainant saying that he will pay the money that was taken by his sister Sumathi, wife of the accused. This shows that the family of the accused had

borrowed money from the complainant and that is why Senthil (D.W.1) has written such a letter to the complainant. Senthil (D.W.1) has further admitted that he is not in talking terms with the complainant subsequently. That is exactly the reason why he has come forward to stand as witness for his other brother-in-law viz. the accused.

14.Both Courts have appreciated the evidence on record in the right perspective. The accused has not given any explanation, when he was examined under Section 313 Cr.P.C. The impugned cheque was issued on 31.01.2005 and the same was presented only on 18.05.2005, perhaps because, the accused being the brother-in-law of the complainant would have prevailed upon him to wait. Had the complainant fabricated the impugned cheque, he would have presented the same on 31.01.2005 and would not have waited till 18.05.2005. This Court does not find any infirmity in the findings arrived at by the two Courts below warranting interference.

In the result, this Criminal Revision is dismissed. The judgment and order dated 12.07.2012 passed by the appellate Court is confirmed. The trial Court is directed to secure the accused and commit him to prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The District and Sessions Judge,
Tiruvarur

2.The Judicial Magistrate,
Tiruvarur.

3. Do-Through The Chief Judicial Magistrate,
Tiruvarur.

4.The Deputy Registrar,
Criminal Side,
High Court, Madras.

+1cc to Mrs.Greetha Senthilkumar, Advocate SR.No.92971

+1cc to Mr.K.Sridhar, Advocate SR.No.91869

CRL.R.C.No.1084 of 2012

EV(CO)
GMY(06/12/2019)



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