

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1338 of 2012

P.Varadharajan

.. Petitioner/
Accused

Vs.

R.Selvam

.. Respondent/
Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C., to set aside the judgment dated 27.08.2012 passed in C.A.86 of 2010 by the Learned I Additional sessions Judge, Salem confirming the judgment of conviction and sentence passed in S.T.C.No.12 of 2009 dated 19.04.2010 by the Learned Judicial Magistrate, NO.III, Salem.

For Petitioner : Mr.K.V.Sridharan
For Respondent : Mr.N.Karthikeyan

O R D E R

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

2.It is the case of the complainant that the accused is his relative; the accused borrowed a sum of Rs.60,000/- from him on 07.05.2008; towards the debt, the accused gave a cheque (Ex.P1) dated 06.08.2008 for a sum of Rs.60,000/-, drawn on Syndicate Bank, Chevapettai Branch; when the complainant presented the said cheque (Ex.P1), it was returned unpaid with the endorsement "funds insufficient" vide bank's return memo (Ex.P2) dated 14.08.2008; therefore, the complainant issued a statutory demand notice (Ex.P3) dated 23.08.2008, which was received by the accused on 27.08.2008 vide postal acknowledgement card (Ex.P4); the accused sent a reply notice dated 10.09.2008 (Ex.P5) repudiating the debt. Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.12

of 2009 for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") before the Judicial Magistrate Court No.III, Salem, against the accused.

3.Before the trial Court, the complainant examined himself as PW1 and marked six exhibits.

4.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and did not give any explanation as to how the cheque executed by him came into the hands of the complainant. On behalf of the accused, no witness was examined, however, one exhibit was marked as Ex.D1 in the cross-examination of the complainant.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.04.2010 in S.T.C.No.12 of 2009, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment. The appeal in C.A.No.86 of 2010 filed by the accused was dismissed by the Additional District and Sessions Court, Salem, on 27.08.2012. Aggrieved by the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

6.Heard Mr.K.V.Sridharan, learned counsel for the accused and Mr.N.Karthikeyan, learned counsel for the complainant.

7.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [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. "

(emphasis supplied)

8.The complainant examined himself as P.W.1 and stated that the accused is his close relative; the accused borrowed Rs.60,000/- on 02.05.2008 promising to return the amount within three months; when he asked the accused to return the amount, the accused gave the impugned cheque dated 06.08.2008, which was dishonoured on 14.08.2008 on the ground "funds insufficient"; a notice dated 23.08.2008 (Ex.P3) was issued, for which, the accused sent a reply notice dated 10.09.2008 (Ex.P5) repudiating the debt. The complainant has also marked his income tax returns as Ex.P6 to show that he has disclosed the loan of Rs.60,000/- that was given to the accused.

9.In the cross-examination of the complainant (P.W.1), he has stated that he did not collect any document from the accused because, the accused was his close relative. The complainant also admitted that he is into transport business and that, he along with his brothers had issued a legal notice dated 01.09.2007 to the accused and his family members, in connection with a temple property.

10.Learned counsel for the accused submitted that when the complainant had issued the notice dated 01.09.2007, the possibility of the complainant giving the loan of Rs.60,000/- to the accused on 02.05.2008 is remote. In the reply notice dated 18.09.2008 (Ex.P5) issued by the accused, the accused has taken a stand that he had borrowed Rs.50,000/- from one Srinivasan and at that time, he had given a blank, but, signed cheque to him, which has been handed over to the complainant by the said Srinivasan for initiating the present prosecution.

11.However, on a perusal of the impugned cheque (Ex.P1) it is seen that there is no material to infer that a blank cheque has been filled up for the purpose of the present prosecution. The accused has not denied the signature in the impugned cheque. However, he has not stated as to when, he took the loan of Rs.50,000/- from the said Srinivasan and when he discharged the said debt.

12.Coming to the legal notice dated 01.09.2007 (Ex.D1) that has been issued by three persons to six persons including the accused, the subject matter of that notice does not relate to any personal dispute between the complainant and the accused. It deals with a 600 sq.ft. land belonging to a temple, which according to the complainant and his brothers, the accused and his brothers were trying to alienate. This advocate notice did not culminate in any litigation. All these aspects have been considered by the two Courts below for rejecting the defence set up by the accused. 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) 11 SCC 441], even that has not been done in this case.

13.The learned counsel for the accused pleaded for leniency in the substantive sentence of imprisonment slapped on the accused by the Courts below.

14.Accepting the submission made by the learned counsel for the accused, the substantive sentence of six months simple imprisonment imposed is reduced to three months simple imprisonment. However, the sentence of fine and the default sentence shall remain the same.

In the result, this criminal revision is partly allowed. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147 of the NI Act, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1338 of 2012. 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.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd/gya

To

1. The Judicial Magistrate No.III
Salem
2. The I Additional District and Sessions Judge
Salem
3. The Deputy Registrar with a direction to return the
Criminal Side original records to the Courts
High Court, below immediately
Madras

4.Do thro the Chief Judicial Magistrate,Salem

copy to :

The Section Officer,
Criminal Section,
High Court,Madras

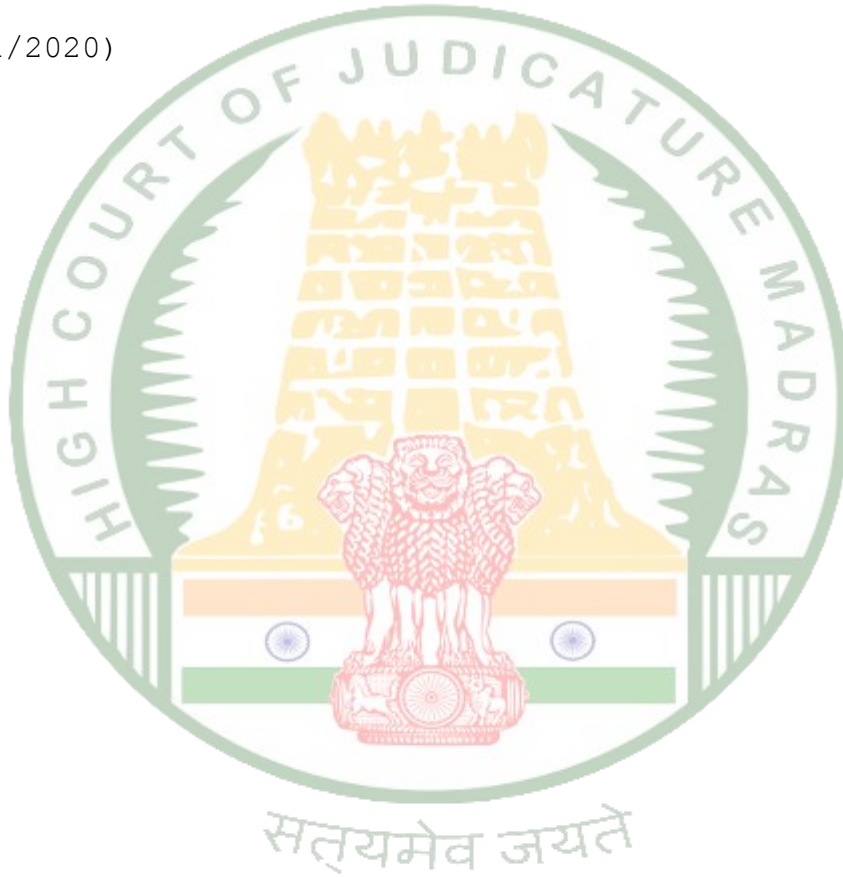
+1cc to Mr.K.Karthikeayan , Advocate SR.No. 10242

+1cc to Mr.K.V.Sridharan , Advocate SR.No. 02486

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spd

A.SK(30/01/2020)



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