

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1410 of 2012

K.Ravichandran

..Petitioner/Accused

Vs

N.Palanisamy

..Respondent/Complainant

Criminal Revision preferred under Section 397 and Section 401 Cr.P.C. to set aside the judgment and order dated 31.08.2012 passed by the V Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore in C.A.No.21 of 2012 confirming the judgment and order dated 30.12.2011 passed by the Judicial Magistrate No.II, Pollachi in S.T.C.No.189 of 2009.

For Petitioner : Mr.C.Veerarahavan

For Respondent : Mr.M.N.Balakrishnan

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 31.08.2012 passed by the V Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore in C.A.No.21 of 2012 confirming the judgment and order dated 30.12.2011 passed by the Judicial Magistrate No.II, Pollachi in S.T.C.No.189 of 2009.

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 was his colleague in the Tamil Nadu State Transport Corporation and that, on 10.10.2008, he borrowed Rs.1,00,000/- from the complainant, towards which, he gave a cheque dated 20.10.2008 for the said sum (Ex.P1), which when presented by the complainant was returned unpaid with the endorsement "funds insufficient" on 30.10.2008 vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 07.11.2008 (Ex.P3), which was refused by the accused and hence, the same returned unserved vide Ex.P4; since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.189 of 2009 before the Judicial Magistrate No.II, Pollachi against the accused for the offence under Section 138

of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

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 P4.

6. 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 offer any plausible explanation as to the circumstance under which, the cheque issued by him came into the possession of the complainant. No witness was examined nor any document marked on the side of the accused.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.12.2011 in S.T.C.No.189 of 2009, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment. The appeal in C.A.No.21 of 2012 that was filed by the accused was dismissed by the V Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore on 31.08.2012. Aggrieved by the concurrent findings of fact of the two Courts below, the accused has filed the present criminal revision under Section 397 read with Section 401 Cr.P.C.

8. Heard Mr.C.Veerarahavan, learned counsel for the accused and Mr.M.N.Balakrishnan, learned counsel for the complainant.

9. 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 Kuldeep 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)

10. In this case, the complainant examined himself as P.W.1 and has stated about the loan that was taken by the accused, the issuance of the cheque, the dishonour of the cheque, the issuance of legal notice and the failure of the accused to comply with the demand.

11. In the cross-examination, the accused had not denied the issuance of the cheque, but, had questioned the complainant (P.W.1) as to who were present, when the loan was taken, for which, the complainant has stated that, his wife was present, when the accused came to his house and asked for the loan.

12. The fact remains that the accused and the complainant were working in the same establishment and they knew each other very well. Just because, the complainant had implicit trust on the accused and gave him Rs.1,00,000/-, without obtaining a pro-note or any other document, is not sufficient to hold that there was no legally enforceable debt. 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. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference.

In the result, this Criminal Revision is dismissed being devoid of merits. The trial Court is directed to secure the accused and commit him in 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. It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid. before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in Crl.R.C.No.1410 of 2012. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The V Additional District and Sessions Judge,
(Fast Track Court No.III)
Coimbatore

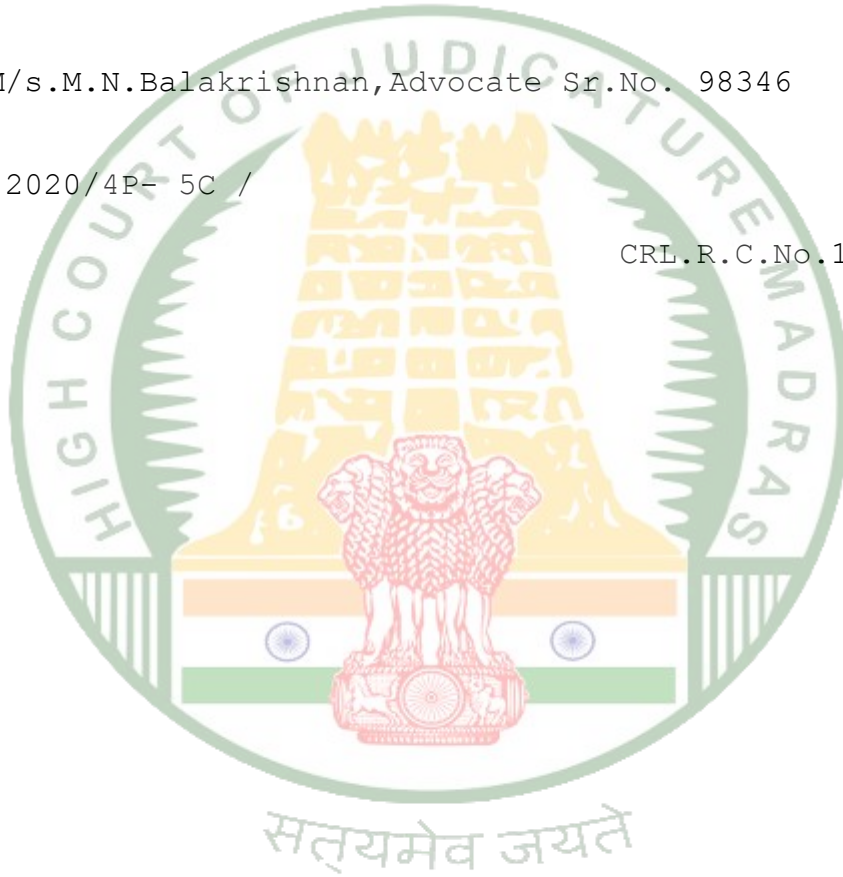
2.The Judicial Magistrate No.II
Pollachi

Copy to : The Assistant Registrar, Criminal Section,
High Court of Madras.

+1 cc to M/s.M.N.Balakrishnan,Advocate Sr.No. 98346

AKM/20.01.2020/4P- 5C /

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