

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1427 of 2012

K.Palanisamy

..

Petitioner/Appellant/
Accused

Vs.

Saravanan

..

Respondent/Respondent/
Complainant

Prayer:Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 12.11.2011 passed in S.T.C.No.628 of 2007 on the file of the Judicial Magistrate Court No.IV, Salem, confirmed by the judgment and order dated 06.10.2012 passed in C.A.No.113 of 2011 on the file of the III Additional District and Sessions Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.Lakshmanasamy

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 12.11.2011 passed in S.T.C.No.628 of 2007 on the file of the Judicial Magistrate Court No.IV, Salem, confirmed by the judgment and order dated 06.10.2012 passed in C.A.No.113 of 2011 on the file of the III Additional District and Sessions Court, Salem.

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 close friend and he borrowed a sum of Rs.1,00,000/- on 04.07.2006; at the time of borrowing the amount, the accused gave a post-dated cheque (Ex-P1) dated 04.10.2006 bearing no.463045 for a sum of Rs.1,04,500/- drawn on Indian Bank,

Thiruchengode Branch; the complainant presented the cheque on 08.01.2007, but, it was returned unpaid with the endorsement "Funds Insufficient" on 18.01.2007 vide bank's return memo (Ex-P2) and debit advice (Ex-P3); therefore, the complainant issued a statutory demand notice (Ex-P4) dated 13.02.2007 to the residential address and office address of the accused; the accused received the same vide postal acknowledgement cards (Exs-P6 and P7) dated 16.02.2007 and 20.02.2007, respectively; since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.628 of 2007 before the Judicial Magistrate No.IV, Salem, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

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

5. 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 nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 12.11.2011 in S.T.C.No.628 of 2007, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

7. Challenging the conviction and sentence, the accused filed C.A.No.113 of 2011 and aggrieved by the failure of the trial Court to award compensation, the complainant filed Crl.R.C.No.21 of 2012 before the Sessions Court. Both the cases were heard by the learned III Additional District and Sessions Judge, Salem. The Sessions Court, by common judgment and order dated 06.10.2012, dismissed both the cases viz., C.A.No.113 of 2011 and Crl.R.C.No.21 of 2012.

8. 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.

9. Heard Mr.R.Nalliappan, learned counsel for the accused and Mr.S.Lakshmanasamy, learned counsel for the complainant.

10. Before advertng to the rival submissions, it may be necessary to state here 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.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², 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)

11. The learned counsel for the accused submitted that the complainant has not filed any supporting document like promissory note, etc., to prove the debt. He further submitted that the accused has discharged the burden under Section 139 of the NI Act satisfactorily, which has not been taken note of by the Courts below.

12. Per contra, the learned counsel for the complainant refuted the submissions made by the learned counsel for the accused.

13. The complainant, in his evidence, has spoken to about his friendship with the accused, the loan of Rs.1,00,000/- that was taken by the accused on 04.07.2006, the issuance of the impugned cheque (Ex-P1), its presentation and dishonour, the issuance of the statutory demand notice (Ex-P4), the receipt of the same by the accused and the failure of the accused to comply with the demand.

14. In the cross-examination of the complainant, the accused has not denied the execution of the cheque (Ex-P1), but, has simply suggested that the cheque (Ex-P1) was not issued towards a 'legally enforceable debt'.

15. 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 Mohan⁴, even that has not been done in this case.

1(2004) 7 SCC 659

2(2019) 4 SCC 197

4 (2010) 11 SCC 441

16. In view of the foregoing discussion, this Court does not find any infirmity or perversity in the judgments and orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. 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, *ibid.*, 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.1427 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

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.IV,
Salem.
2. The III Additional District
and Sessions Judge,
Salem.
3. The Deputy Registrar, with a direction to return the
Madras High Court, original records to the Courts
Chennai - 600 104. below concerned

Copy to

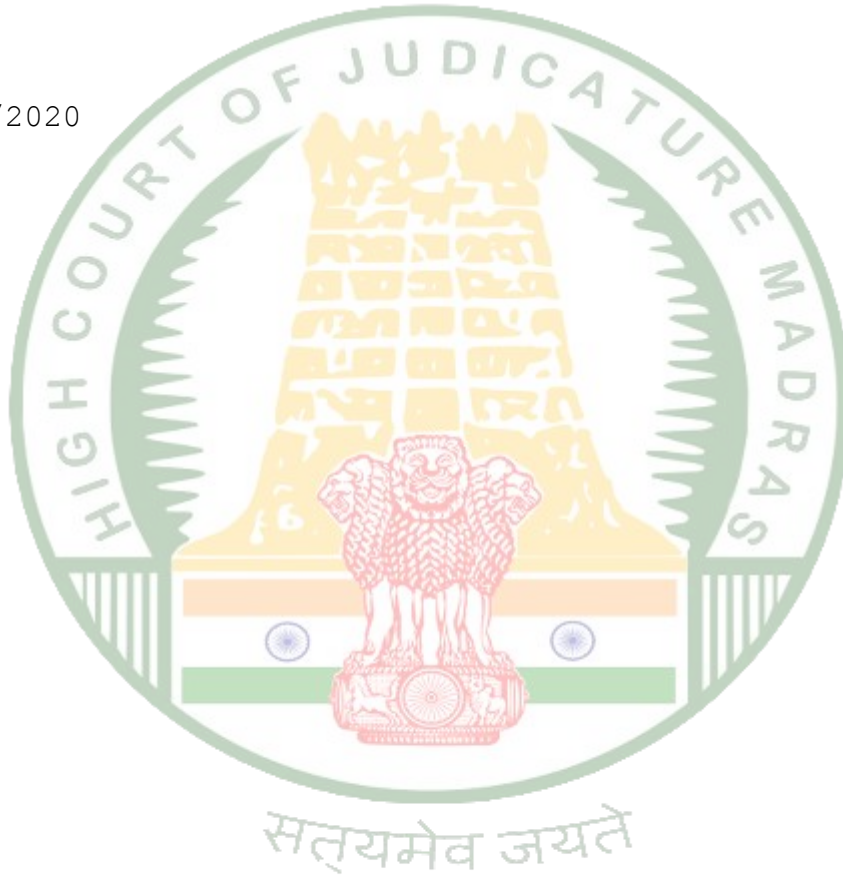
- 1.The Section Officer,
Criminal Section(records),
High Court, Madras.

2.The Assistant Registrar,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Nalliappan, Advocate Sr.102801

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srg 18/02/2020



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