

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1433 of 2012

P.Poongodi .. Petitioner/Appellant
Accused

Vs.

N.Mani .. Respondent/Respondent
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 05.07.2012 passed in S.T.C.No.910 of 2009 on the file of the Judicial Magistrate Court No.II, Tiruppur, confirmed by the judgment and order dated 16.10.2012 passed in C.A.No.3 of 2012 on the file of the Principal Sessions Court, Tiruppur.

For Petitioner : Mr.L.Mouli

For Respondent : Mr.P.M.Duraiswamy

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 05.07.2012 passed in S.T.C.No.910 of 2009 on the file of the Judicial Magistrate Court No.II, Tiruppur, confirmed by the judgment and order dated 16.10.2012 passed in C.A.No.3 of 2012 on the file of the Principal Sessions Court, Tiruppur.

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 the proprietrix of S.M.D. Chamber Bricks which is into manufacture

and sale of bricks; the accused and her husband borrowed a sum of Rs.6,00,000/- on 10.04.2006 vide loan agreement (Ex-P1); the accused paid a sum of Rs.1,70,000/- towards interest and when the complainant started demanding repayment of the balance amount with interest, the accused gave a cheque (Ex-P2) dated 16.03.2009 for a sum of Rs.8,50,000/- drawn on Indian Overseas Bank, Chinnathadagam Branch; the complainant presented the said cheque on 20.03.2009 and the same was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P3) dated 26.03.2009; therefore, the complainant issued a statutory demand notice (Ex-P5) dated 09.04.2009 to the accused, which was not received by the accused and hence, the same was returned unserved on 21.04.2009 vide returned postal cover (Ex-P6); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.910 of 2009 before the Judicial Magistrate No.II, Tiruppur, 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 her, she denied the same and did not give any explanation as to how the cheque issued by her came into the hands of the complainant. On behalf of the accused, three witnesses were examined viz., Palaniammal, Postwoman - DW1, Ganesan - DW2 and Ponnusamy, husband of the accused - DW3 and four exhibits were marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 05.07.2012 in S.T.C.No.910 of 2009, convicted the accused of the offence under Section 138 of the NI Act and sentenced her to undergo one year simple imprisonment and to pay a sum of Rs.8,50,000/- as compensation to the complainant.

7. The appeal in C.A.No.3 of 2012 filed by the accused was dismissed by the Principal Sessions Court, Tiruppur, on 16.10.2012.

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.L.Mouli, learned counsel for the accused and Mr.P.M.Duraiswamy, 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. Mr.L.Mouli, learned counsel for the accused placed strong reliance on the evidence of Ganesan (DW2) and submitted that the impugned cheque (Ex-P2) in question relates to the year 2006, and therefore, it could not have been issued by the accused in the year 2009 as alleged by the complainant. In support of this defence, the accused examined one Ganesan (DW2), through whom Exs-D2 to D4 were marked to show that the impugned cheque (Ex-P2) was issued to the accused sometime in the year 2006 itself and not in the year 2009.

12. A perusal of the impugned cheque (Ex-P2) shows that it bears the rubber stamp of S.M.D. Chamber Bricks and has been signed by the accused as proprietrix. The accused has not denied her signature in the impugned cheque (Ex-P2).

13. It is the case of the accused that she and her husband Ponnusamy (DW3) had taken a loan of Rs.1,00,000/- from the complainant in the year 2006 and at that time, the complainant had obtained three blank cheques from them, out of which, one of the cheques has been misused to launch the present prosecution even after the said loan was discharged.

14. The accused also took a stand that the statutory demand notice (Ex-P5) was not served on her. In support of this defence

1(2004) 7 SCC 659

2(2019) 4 SCC 197

case, the accused examined one Palaniammal (DW1), who, in her evidence, has stated that she attempted to deliver the postal cover (Ex-P6) to the addressee thrice, but in vain and she left an intimation to the addressee to come to the post office to collect the same; since the addressee did not come to collect the postal cover (Ex-P6), she returned the cover to the sender.

15. The defence wanted to establish through Palaniammal (DW1) that she had not left any written intimation at the residence of the accused. In the opinion of this Court, the complainant cannot be held responsible if the postwoman does not leave written intimation at the residence of the addressee. The idea of giving a statutory demand notice to the accused is to put him on notice that the cheque given by him has been dishonoured and also to provide an opportunity to him to make the payment within fifteen days. If the accused was really unaware of the dishonour of her cheque and also about the statutory demand notice, she could have come forward to pay the cheque amount to the complainant before the Magistrate himself.

16. Ponnusamy (DW3), in his evidence, has stated that the complainant is his relative; he and his wife (accused) borrowed a sum of Rs.1,00,000/- from the complainant in the year 2006 and at that time, the complainant had taken three cheques including the impugned cheque (Ex-P2).

17. In the cross-examination of Ponnusamy (DW3), he was confronted with the loan agreement (Ex-P1) and he admitted that it was he, who had purchased the stamp paper for Rs.10/- for writing the loan agreement. He admitted his signature and also his wife Poongodi's (accused) signature in the loan agreement (Ex-P1) as well in the impugned cheque (Ex-P2).

18. It is seen that the stamp paper bears the date 31.03.2006 and the loan agreement was entered into on 10.04.2006. The loan agreement states that the couple had borrowed a sum of Rs.6,00,000/- and agreed to return the same with interest at the rate of 24 % per annum within six months. However, in the evidence of Ponnusamy (DW3), he has not stated when he had borrowed the sum of Rs.1,00,000/- from the complainant and when he had discharged it, whereas, the complainant has marked the loan agreement (Ex-P1) to show that the couple had borrowed a sum of Rs.6,00,000/- on 10.04.2006.

19. Just because the impugned cheque (Ex-P2) was issued by the bank to the accused in the year 2006, about which, the complainant may not be aware of, this Court cannot infer that

the blank cheque was given as security for the loan taken in the year 2006.

20. According to the accused, she had discharged the loan of Rs.1,00,000/- in the year 2006 itself, but, the complainant had not returned the impugned cheque (Ex-P2) that was given as security. The impugned cheque (Ex-P2) was dated 16.03.2009. The accused did not take any steps from 2006 to 2009 to get back the cheques from the complainant or to issue "Stop Payment" instruction to his bank.

21. All these factors have been taken into consideration by the Courts below and therefore, 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 her 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.1433 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 VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Tiruppur.

5/6

2. The Principal Sessions Judge,
Tiruppur.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return the
original records to the Courts
below concerned

4.The Assistant Registrar(Crl.Side)
High Court, Madras.

5.The Central Prison,
Coimbatore.

6.The Chief Judicial Magistrate,
Tiruppur.

+lcc to Mr.L.Mouli, Advocate sr.103328

+lcc to Mr.P.M.Duraiswamy, Advocate sr.103208

Crl.R.C.No.1433 of 2012

pm(co)
nr 28/01/2020