

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2019

PRONOUNCED ON : 16.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1454 of 2012

R.Venkatesan ... Petitioner/Accused

Vs

1.P.S.Shankar

2.The Public Prosecutor
Tiruvarur

... Respondents/Complainant

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment and order dated 25.08.2012 passed by the District and Sessions Judge, Tiruvarur in C.A.No.13 of 2008 confirming the judgment and order dated 19.04.2006 passed by the Judicial Magistrate, Tiruvarur in C.C.No.755 of 2004.

For Petitioner : Mr.K.Sridhar
for M/s.K.Sridhar Associates

For 1st Respondent : Mr.V.T.Narendiran
Amicus Curiae

O R D E R

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

2.It is the case of the complainant that the accused was his close friend; the accused borrowed Rs.70,000/- as hand loan on 30.10.2003, towards which, he gave a cheque dated 03.02.2004 for Rs.70,000/- (Ex.P1) drawn on Indian Bank, Tiruvarur branch; the complainant presented the cheuqe (Ex.P1) on 22.06.2004 in Indian Bank, Pulivalam branch and it was returned with the endorsement "account closed" on the same day vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 19.07.2004 (Ex.P3), which was received by the accused on 22.07.2004 (Ex.P4). Since the accused did not comply with the demand, the complainant initiated a prosecution C.C.No.755 of 2004 before the Judicial Magistrate, Tiruvarur against the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the

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

4.To prove the case, the complainant examined himself as P.W.1 and examined one Vadivel, Manager, Indian Bank, Tiruvarur branch as P.W.2 and Ramu, Manager, Indian Bank, Pulivalam branch as P.W.3. and marked Exs.P1 to P4.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. Surprisingly, the accused summoned Vadivel (P.W.2) and Ramu (P.W.3) and examined them as D.W.1 and D.W.2, which practice is indeed very strange. At the most, the trial Court should have recalled Vadivel (P.W.2) and Ramu (P.W.3) and should have permitted the accused to cross-examine them and not examined them in-chief. It is indeed very sad that the trial Court Judge had permitted a practice, that is unknown to law. On the side of the accused, Exs.D1 and D2 were marked.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.04.2006 in C.C.No.755 of 2004, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months rigorous imprisonment and pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment and further directed to pay Rs.73,650/- as compensation and costs to the complainant. The appeal in C.A.No.13 of 2008 that was filed by the accused was dismissed by the Sessions Court, Tiruvarur on 25.08.2012. Aggrieved by the concurrent findings of fact arrived at by the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

7.Notice was served on the complainant, but, he did not enter appearance. His name was printed in the cause list. Therefore, this Court appointed Mr.V.T.Narendiran, Advocate (E.No.802/1996) as Amicus Curiae for the complainant.

8.Heard Mr.K.Sridhar, learned counsel for the accused and Mr.V.T.Narendiran, 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 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)

10.Mr.Sridhar, learned counsel appearing for the accused submitted that the complainant had issued a statutory demand notice dated 19.07.2004 (Ex.P3) to one V.Venkatesan and not to the accused, who is R.Venkatesan. In other words, learned counsel contended that instead of prosecuting V.Venkatesan, the complainant has prosecuted R.Venkatesan. In support of this submission, learned counsel submitted that the complainant has admitted that the father of the accused is one Ramakrishnan and therefore, he should have filed the complaint against R.Venkatesan and not against V.Venkatesan. In the evidence of the complainant, he has clearly identified the accused in the dock and has stated that, he was his close friend and that, he (accused) borrowed Rs.70,000/- and gave the impugned cheque (Ex.P1). In the cross-examination of the complainant, no suggestion denying this positive assertion by the complainant was ever put. The accused has not even suggested to the complainant that a wrong person is being prosecuted. That apart, Vadivel (P.W.2), Manager of Indian Bank, Tiruvarur branch, has clearly stated that, the accused was the holder of the S.B.A/c.No.17643 and the impugned cheque (Ex.P1) was drawn on his account. The impugned cheque (Ex.P1) also shows the account number as 17643. Hence, this contention of the learned counsel stands rejected.

11.Mr.Sridhar further submitted that the signature in the cheque (Ex.P1) differs from the signature in the specimen card (Ex.D1) and hence, the prosecution cannot be sustained.

12.In this case, the cheque (Ex.P1) was not dishonoured on the ground "signature differs", but on the ground "account closed". In Laxmi Dyechem Vs. State of Gujarat and others [(2012)13 SCC 375], the Supreme Court has held that a prosecution under Section 138 of the NI Act can be maintained, even if the cheque was returned on the ground "signature differs".

13.It is seen that the accused has given the impugned cheque (Ex.P1) from his account, which he had closed long back. It is a fact that the cheque leaf (Ex.P1) relates to the S.B.A/c.No.17643 of the accused with Indian Bank, Tiruvarur branch. It is possible that the accused would have signed differently in the impugned cheque (Ex.P1), knowing full well that he has after all closed the account. The accused has not lodged any police complaint alleging that his

cheque leaf was stolen and misused by an impersonator.

14. In fact, the complainant in the cross-examination, has stated that, he even knows the house of the accused and the name of the father of the accused is Ramakrishnan. Just because, the complaint shows the name of the accused as V.Venkatesan instead of R.Venkatesan, the prosecution will not stand vitiated. Even in the complaint, the complainant has stated the name of the accused as V.Venkatesan, S/o.Ramakrishnan. Vadivel (P.W.2), the Branch Manager of the accused bank has denied the suggestion that no cheque book was issued for the S.B.A/c.No.17643. 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 as being devoid of merits. 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.1454 of 2012. This Court places on record its appreciation to Mr.V.T.Narendiran. The Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

gya

To

1.The District and Sessions Court
Tiruvarur

2.The Judicial Magistrate Court
Tiruvarur

3. The chief Judicial Magistrate, Tiruvaur

4.The Deputy Registrar
Criminal Side

<https://hcservices.ecourts.gov.in/hcservices/>
High Court, Madras.

5. The Section Officer,
Criminal Section (Records)
High Court, Madras.

+1cc to Mr.K.Sridhar, Advocate SR.No.105877

CRL.R.C.No.1454 of 2012

VGII(CO)
GMY(29/01/2020)



WEB COPY