IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1490 of 2012

S.S.Murugesan .. Petitioner/Appellant/ Accused

Vs.

G.Baskaran .. Respondent/Respondent/ Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 21.02.2012 passed in S.T.C.No.325 of 2009 on the file of the Judicial Magistrate Court No.II, Namakkal, confirmed by the judgment and order dated 17.08.2012 passed in C.A.No.16 of 2012 on the file of the Principal Sessions Court, Namakkal.

For Petitioner : Mr.M.Sridhar
For Respondent : Mr.R.Karthikeyan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 21.02.2012 passed in S.T.C.No.325 of 2009 on the file of the Judicial Magistrate Court No.II, Namakkal, confirmed by the judgment and order dated 17.08.2012 passed in C.A.No.16 of 2012 on the file of the Principal Sessions Court, Namakkal.

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

3. The complainant is the Proprietor of Sathyam Agencies, which is into the business of selling poultry feeds. The accused was running a poultry farm and he had purchased poultry feeds to

the tune of Rs.2,68,000/- from the complainant, towards which, he gave a cheque (Ex-P1) dated 10.12.2007 bearing no.326125 for a sum of Rs.2,68,000/- drawn on Bank of Baroda, Namakkal Branch. The complainant presented the said cheque (Ex-P1) on 28.04.2008 and it was returned unpaid with the endorsement “Funds Insufficient” vide bank's return memo (Ex-P2) dated 28.04.2008. Therefore, the complainant issued a statutory demand notice (Ex-P3) dated 08.05.2008, which was received by the accused on 10.05.2008 vide postal acknowledgment card (Ex-P4). Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.325 of 2009 before the Judicial Magistrate No.II, Namakkal, 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 five exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he stated that he had business dealings with the complainant and had settled all the dues; the members of the Poultry Feeds Owners Association took him to the association building and obtained blank cheques from him, in connection with which, a case has been registered in Crime No.1 of 2008; the signature in the cheque (Ex-P1) was of his and he had filled up only the amount in the cheque (Ex-P1), but, not the payee's name. On behalf of the accused, seven witnesses were examined viz., Murugesan - DW1, the accused herein, Poongodi - DW2, wife of the accused, Ravi - DW3, Rangasamy - DW4, Sengottuvel - DW5 and Palanisamy - DW6, relatives of the accused and Udhayakumar - DW7, Branch Manager of Canara Bank, Namakkal Branch, where the complainant was having his account; however, no exhibit was marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.02.2012 in S.T.C.No.325 of 2009, 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.2,000/-, in default to undergo three months simple imprisonment. The trial Court also directed the accused to pay a sum of Rs.2,68,000/- as compensation to the complainant.

7. The appeal in C.A.No.16 of 2012 filed by the accused was dismissed by the Principal Sessions Court, Namakkal, on 17.08.2012.

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.M.Sridhar, learned counsel for the accused and Mr.R.Karthikeyan, learned counsel for the complainant.

10. Before adverting 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 Kumar[2], 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 accused has examined seven witnesses and has thereby discharged the burden under Section 139 of the NI Act and hence, the accused deserves to be acquitted.

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

13. This Court gave its anxious consideration to the rival submissions.

14. The complainant, in his evidence, has stated that he is the Proprietor of Sathyam Agencies, which is into the business of selling poultry feeds; the accused has a poultry farm and had purchased poultry feeds worth of Rs.2,68,000/-, towards which, he (accused) gave the impugned cheque (Ex-P1) dated 10.12.2007; the impugned cheque (Ex-P1) was presented on 28.04.2008 and it was returned unpaid with the endorsement "Funds Insufficient" on

1

2

28.04.2008; he issued the statutory demand notice (Ex-P3) dated 08.05.2008, which was received by the accused vide postal acknowledgement card (Ex-P4) dated 10.05.2008.

15. Admittedly, the accused had not replied to the statutory demand notice (Ex-P3) issued by the complainant. It is the defence of the accused that, on 01.01.2008, when he was away from his house, about thirty persons belonging to the Poultry Feeds Owners Association came to his house, threatened his wife Poongodi (DW2) and left; again on 02.01.2008, when he returned home around 9.00 p.m., a group of association members came to his house and illegally detained him; six of them took him to the association building and forced him to sign on blank papers and cheques; the complainant Baskaran was also one among them. This defence has been rightly disbelieved by the Courts below, because, the accused would have issued "Stop Payment" instructions to his bank, had he been abducted and the impugned cheque (Ex-P1) obtained from him by force.

16. The learned counsel for the accused submitted that Udhayakumar (DW7), Branch Manager, Canara Bank, Namakkal Branch, where the complainant was having his account, has stated that the ink, with which, the name of the payee has been written differs from the other writings in the cheque (Ex-P1). This stand has also been rightly rejected by the Courts below by relying upon Sections 20 and 118 of the NI Act.

17. At this juncture, it is apropos to allude to Bir Singh (supra), wherein, it has been held as under:

> "33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
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> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

Therefore, when the accused has admitted his signature in the cheque (Ex-P1), the onus is on him to prove that the said cheque was not issued for a 'legally enforceable debt'.

18. In the cross-examination, the accused has admitted that he had purchased poultry feeds from the complainant and had paid the price for it. However, he did not produce any receipt to show that he had made payments to the complainant for the purchases that were made by him. He also did not mark even a copy of the FIR that is said to have been registered by the police for the incident that is said to have taken place on 01.01.2008 and 02.01.2008. Pertinent it is to state here that the impugned cheque is dated 10.12.2007 and was presented by the complainant only on 28.04.2008 and not immediately after 02.01.2008.

19. The evidence of the defence witnesses show as if thirty persons had abducted the accused, taken him to the association building, kept him in illegal confinement, assaulted him, took blank, but, signed cheques from him and released him on the next day, whereas, there is no material on record to show that the police complaint was given, except in the statement of the accused recorded under Section 313 Cr.P.C. When the accused has taken such a plea of discharge of debt, the onus is on him to prove it satisfactorily.

20. To recapitulate, the accused has admitted his signature and has also admitted that he has filled in the amount column of the impugned cheque (Ex-P1), but, has denied the handwritings in the payee column of the cheque (Ex-P1).

21. 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[3], even that has not been done in this case.

22. 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,

3

who shall make it form part of the records in Crl.R.C.No.1490 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 IV)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.II,
Namakkal.

2. The Principal Sessions Judge,
Namakkal.

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,
Criminal Side,
Madras High Court,
Chennai - 104.

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 106498
+1cc to Mr.M.Sridhar , Advocate SR.No. 106444

Crl.R.C.No.1490 of 2012

A.SK(09/03/2020)