

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No.1492 of 2012

S.S.Murugesan

... Revision Petitioner

Vs.

G.Baskaran

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 17.08.2012, passed by the Principal Sessions Judge, Namakkal, in C.A.No.6 of 2012, confirming the judgment of conviction and sentence, dated 21.02.2012, passed by the Judicial Magistrate No.II, Namakkal, in S.T.C.No.160 of 2008.

For Petitioner : Mr.M.Sridhar

For Respondent : Mr.R.Karthikeyan

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 17.08.2012, passed by the Principal Sessions Judge, Namakkal, in C.A.No.6 of 2012, confirming the judgment of conviction and sentence, dated 21.02.2012, passed by the Judicial Magistrate No.II, Namakkal, in S.T.C.No.160 of 2008.

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 borrowed Rs.3,03,000/- on 06.03.2007 and executed a promissory note agreeing to repay the amount with interest; the accused was paying interest for sometime; when the complainant demanded the repayment of the loan amount, the accused issued nine cheques and got back the promissory note and gave an acknowledgment letter dated 14.09.2007 (Ex.P1); out of the nine cheques, when the complainant presented two cheques, they were returned unpaid; when the complainant approached the accused, the accused gave cash towards the dishonoured cheques and took them back from the complainant; the accused requested the complainant not to present the balance seven cheques on the dates mentioned therein and therefore, the complainant presented the seven cheques on 02.01.2008; the seven cheques

are as under :

- (i) Cheque dated 10.11.2007 for Rs.25,000/- (Ex.P2)
- (ii) Cheque dated 17.11.2007 for Rs.25,000/- (Ex.P3)
- (iii) Cheque dated 01.12.2007 for Rs.50,000/- (Ex.P4)
- (iv) Cheque dated 08.12.2007 for Rs.40,000/- (Ex.P5)
- (v) Cheque dated 15.12.2007 for Rs.43,000/- (Ex.P6)
- (vi) Cheque dated 22.12.2007 for Rs.40,000/- (Ex.P7)
- (vii) Cheque dated 29.12.2007 for Rs.30,000/- (Ex.P8)

All the seven cheques were returned unpaid on 02.01.2008 with endorsement "funds insufficient" vide Bank memo dated 02.01.2008 (Ex.P10); the complainant issued a statutory demand notice dated 21.01.2008 (Ex.P11), which was received by the accused on 29.01.2008 vide postal acknowledgment card (Ex.P12); since the accused did not comply with the demand, the complainant initiated prosecution in S.T.C.No.160 of 2008 before the Judicial Magistrate No.II, Namakkal, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.The complainant examined himself as P.W.1 and marked Exs.P1 to P12. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied everything. The accused examined himself as D.W.1 and also examined D.Ws.2 to 7. No document was marked on the side of the accused.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 21.02.2012, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and pay fine of Rs.2,000/- in default to undergo simple imprisonment for three months.

6.The appeal in C.A.No.6 of 2012, that was filed by the accused, was dismissed by the Principal Sessions Judge, Namakkal, vide judgment dated 17.08.2012.

7.Challenging the concurrent findings of the two Courts below, the accused filed the present Criminal Revision Case before this Court under Section 397 r/w. 401 Cr.P.C.

8.Heard the learned counsel on either side and perused the materials available on record.

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.It is the defence of the accused that he was having a poultry farm and was purchasing poultry feeds from local distributors; since he started purchasing poultry feeds from Kerala, the poultry feeds dealers developed grievance against him; on 01.01.2008, when he was away, they came to his house and threatened his wife Poonkodi; on 02.01.2008, when the accused returned home, around 30 persons belonging to the Poultry Feeds Dealers Association came to his house and abducted him, took him to their Association office, assaulted him, and obtained signed cheques from him.

11.Both the Courts have rightly disbelieved the evidence of D.Ws.1 to 7 and have rejected this defence theory. Had the accused been abducted and beaten as alleged by him, he would have given a police complaint and would have marked the First Information Report. Though the accused examined seven witnesses on his side, he did not mark any F.I.R. to show that he had given police complaint. That apart, all the seven cheques have been issued in October, November and December, 2007. According to the accused, he was abducted by the members of the Association and the cheques were forcibly obtained from him on the night of 02.01.2008, whereas, the complainant has presented the seven cheques on 02.01.2008 in his Bank during Bank hours. Therefore, the contention of the accused that the cheques were forcibly obtained from him in the night of 02.01.2008 is belied.

12.In Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019), the Supreme Court has held as follows :

'20.The Trial Court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

21. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act ...''

Though the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability, as held by the Supreme Court in Rangappa Vs. Sri Mohan [2010 (4) CTC 118], the same has not been done in this case.

13. In fine, this Court does not find any infirmity in the judgments of the Courts below. In the result, this Criminal Revision Case is dismissed and the judgments of the two Courts below are confirmed. The trial Court is directed to secure the accused to suffer the sentence imposed on him.

14. 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 Negotiable Instruments 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.1492 of 2012.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

mkn

Copy to :

1. The Judicial Magistrate No.II,
Namakkal.

2. The Principal Sessions Judge,
Namakkal.

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

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

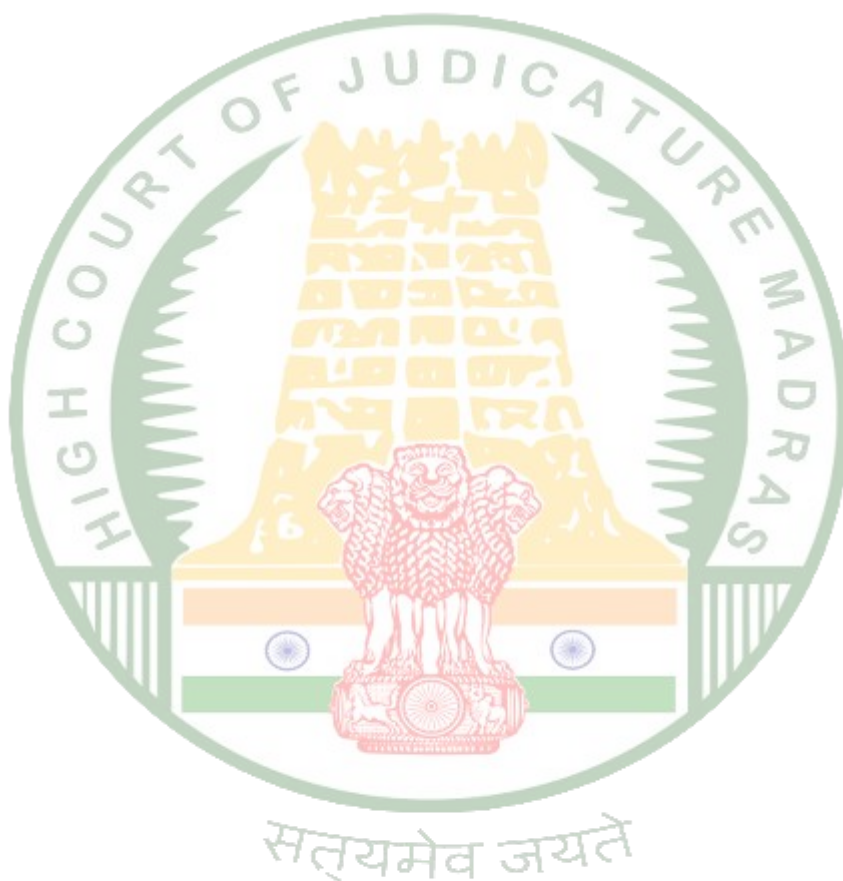
4.The Assistant Registrar,
Criminal Side,
Madras High Court,
Chennai - 104.

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 106500

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

Crl. R.C. No.1492 of 2012

A.SK(09/03/2020)



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