

BAIL SLIP

The Appellant herein/Accused Namely G.Selvam S/o.Govindaswamy, (in STC.No.153 of 2009 on the file of Judicial Magistrate No.I, Coimbatore) was directed to be released on bail by order of this court dated 21.12.2012 and made in M.P.No.1 of 2012, in CrI.R.C.No.1522 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2019

PRONOUNCED ON : 06.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1522 of 2012

G.Selvam .. Petitioner/Accused

Vs

R.Karthikeyan ... Respondent/Complainant

Criminal Revision preferred under Sections 397 and 401 Cr.P.C. to set aside the judgment and order dated 08.10.2012 passed by the Principal District and Sessions Judge, Coimbatore in C.A.No.2 of 2012 confirming the judgment and order dated 10.12.2011 passed by the Judicial Magistrate No.I, Coimbatore in S.T.C.No.153 of 2009.

For Petitioner : Mr.K.Madhu

For Respondent : Mr.C.D.Johnson

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 08.10.2012 passed by the Principal District and Sessions Judge, Coimbatore in C.A.No.2 of 2012 confirming the judgment and order dated 10.12.2011 passed by the Judicial Magistrate No.I, Coimbatore in S.T.C.No.153 of 2009.

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.13,00,000/- on 11.05.2008 and executed a demand promissory note (Ex.P1); thereafter, the accused issued a cheque dated 18.05.2008 for Rs.13,00,000/- (Ex.P2), which was presented by him (complainant) on 27.09.2008, returned with the endorsement "exceeds arrangement" vide bank memo (Ex.P3); he (complainant) issued a statutory demand notice dated 30.09.2008 (Ex.P5), which was received by the accused on 30.10.2008 by acknowledgment card (Ex.P6); the accused issued a reply notice dated 30.10.2008 (Ex.P7) repudiating the debt; therefore, he (complainant) initiated a prosecution in S.T.C.No.153 of 2009 before the Judicial Magistrate No.I, Coimbatore under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

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

5.To prove the case, the complainant examined himself as P.W.1 and marked Exs.P1 to P7. On the side of the accused, three witnesses viz. Senthilkumar (D.W.1), Manokaran (D.W.2) and the accused (Selvam-D.W.3) were examined and Exs.D1 to D4 were marked.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him,, he denied the same.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.12.2011 in S.T.C.No.153 of 2009, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for one year and pay fine of Rs.5,000/- in default, to undergo one month simple imprisonment. The appeal in C.A.No.2 of 2012 that was filed by the accused was dismissed by the Principal District and Sessions Judge, Coimbatore on 08.10.2012. Challenging the concurrent findings of fact, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8.Heard Mr.K.Madhu, learned counsel for the accused and Mr.C.D.Johnson, learned counsel for the complainant.

9.Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

9.1. While exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659]:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not

indicate that the revisional power of the High Court can be exercised as a second appellate power.
(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

9.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the following question of law was formulated :

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20. As held by this Court in *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. The answer

to the first question is therefore, in the negative.”

10.The complainant (P.W.1), in his evidence, has stated about the loan that was taken by the accused on 11.05.2008; the issuance of the promissory note (Ex.P1); the issuance of the cheque dated 18.05.2008 (Ex.P2); the presentation of the cheque for clearance on 27.09.2008, its dishonour on the ground “exceeds arrangement” vide bank memo (Ex.P3); the issuance of the lawyer's notice dated 30.09.2008 (Ex.P6) and the receipt of the reply notice from the accused dated 13.10.2008 (Ex.P7).

11.In the cross-examination of the complainant (P.W.1), he has stated that he is working as Assistant Manager in Swisscom company, Coimbatore and that he was introduced to the accused by one Senthilkumar (D.W.1); he (complainant) admitted that in the year 2007, he had given a loan of Rs.10,00,000/- to the accused by deposit of title deeds and that, the accused was paying interest; again, when the accused wanted the present loan, he gave it after getting a promissory note.

12.Mr.K.Madhu, learned counsel for the accused submitted that when the accused had not properly paid the interest for the earlier loan of Rs.10,00,000/-, the complainant could not have given a fresh loan of Rs.13,00,000/- subsequently. In the cross-examination, the complainant has stated that the accused was paying interest for the sum of Rs.10,00,000/-, but, it was not regular. That apart, the complainant has admitted that the property of the accused under mortgage exceeded both the loans. Therefore, it could not be said that the accused was not paying the interest for the earlier loan of Rs.10,00,000/-. As regards the source, the complainant has produced his accounts to show that two days prior to giving of loan, he had withdrawn Rs.15,00,000/- from his bank account with Punjab National Bank.

13.Learned counsel for the accused further submitted that the complainant has also admitted that he took money from his wife for giving the loan and therefore, it cannot be stated that the complainant had the means to give the loan. It is the defence of the accused that the impugned cheque and promissory note were given at the time of obtaining the mortgage loan of Rs.10,00,000/-, which the complainant has misused.

14.It may be relevant to state here that even in the statutory notice (Ex.P5), the complainant has referred to the earlier loan and that, he has not suppressed the factum of

having given the earlier loan. When the complainant was asked as to whether he has shown the present loan in his income tax returns, he has stated that in the affirmative. The complainant has himself voluntarily given his PAN card number in the cross-examination.

15.The accused examined Senthilkumar (D.W.1), a common friend of both. However, Senthilkumar (D.W.1), in his cross-examination, has clearly stated that the accused had borrowed Rs.13,00,000/- from the complainant on 11.05.2008 and had issued the promissory note and the cheque. In fact, Senthilkumar (D.W.1) has signed as witness in the promissory note (Ex.P1). Therefore, the defence witness has supported the case of the complainant. The accused examined Mr.K.Manokaran (D.W.2), Income Tax Officer, who has filed the Income Tax Returns of the complainant, wherein, the loan of Rs.13,00,000/- has also been shown.

16.Ultimately, the accused examined himself as D.W.3 and stated that he had borrowed only Rs.10,00,000/- and not Rs.13,00,000/- as alleged by the complainant. The accused has admitted his signature in the impugned cheque (Ex.P2). He has also admitted his signature in the promissory note (Ex.P1). A perusal of the promissory note shows that Senthilkumar (D.W.1) has signed as a witness in that. He has also admitted that in the cross-examination.

17.This Court does not find any interpolations in the promissory note and in the impugned cheque. 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"

The accused has not discharged the burden under Section 139 of the NI Act, even by preponderance of probability. Therefore, this Court does not find any good reason to interfere with the findings of the two Courts below warranting interference.

In the result, this Criminal Revision is dismissed. The trial Court is directed to secure the accused and commit him to prison to undergo the remaining period of sentence, if any. 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. Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya

To

1. The Principal District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate Court No.I, Coimbatore.
3. Do Thro The Chief Judicial Magistrate, Coimbatore.
4. The Deputy Registrar,
Criminal Side, High Court, Madras.

Copy To

The Section Officer,
Criminal Section, High Court, Madras-104.

+1cc to Mr.P.Rajesh, Advocate, S.R.No.91944
+1cc to Mr.C.D.Johnson, Advocate, S.R.No.92067

CRL.R.C.No.1522 of 2012

SV(CO)
CS/03/12/2019