

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.547 of 2012

S.Karthikeyan

..Petitioner/Appellant/Accused

Vs.

Anandhan

.. Respondent/Respondent/
Complainant

Criminal Revision filed under section 397 r/w of 401 CRPC set aside the order dated 13.02.2012 made in CA.No.229/2011 on the file of the Additional District Judge, Fast Track Court No.III, Coimbatore conforming the Judgment dated 16.09.2011 made in C.C.No.265/2007 on the file of the learned Judicial Magistrate No.2 Coimbatore.

For Petitioner : Mr.M.N.Balakrishnan

For Respondent : Mr.K.Thilageswaran

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 16.09.2011 passed in C.C.No.265 of 2007 on the file of the Judicial Magistrate Court No.II, Coimbatore, confirmed by the judgment and order dated 13.02.2012 passed in C.A.No.229 of 2011 on the file of the Additional District Court (Fast Track Court No.III), Coimbatore.

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 his close friend and is running a mobile show room; on 05.08.2006, the accused borrowed a sum of Rs.80,000/- from the complainant and towards the said debt, the accused gave a post dated cheque (Ex-P1) dated 20.09.2006; the complainant presented the cheque (Ex-P1) on the said date and the same was returned unpaid with

the endorsement "Payment Stopped" on 21.09.2008 (Ex-P2). Therefore, the complainant issued the statutory demand notice (Ex-P3) dated 16.10.2006, which was received by the accused on 19.10.2006, as could be seen from the postal acknowledgment card (Ex-P4).

4. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.265 of 2007 before the Judicial Magistrate Court No.II, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act"), against the accused.

5. Before the trial Court, the complainant examined himself as PW1 and marked four exhibits.

6. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as DW1 and also examined one Srinivasan as DW2 and marked two exhibits.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 16.09.2011 in C.C.No.265 of 2007, 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.3,000/-, in default to undergo three months simple imprisonment.

8. The appeal in C.A.No.229 of 2011 filed by the accused was dismissed by the Additional District Court (Fast Track Court No.III), Coimbatore, on 13.02.2012.

9. Challenging the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision under Section 397 r/w 401 Cr.P.C.

10. Heard Mr.M.N.Balakrishnan, learned counsel for the accused and Mr.K.Thilageswaran, learned counsel for the complainant.

11. 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

¹(2004) 7 SCC 659

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)

12. The complainant, in his evidence, has spoken to about the friendship with the accused, loan of Rs.80,000/- that was given to the accused on 05.08.2006, the issuance of the post dated cheque (Ex-P1), its presentation and dishonour, the issuance of the statutory demand notice (Ex-P3) and the failure of the accused to comply with the demand.

13. It is the defence of the accused that on 23.06.2006, he lost five cheques from his shop, for which, he gave a complaint (Ex-D1) on 28.06.2006 in the police station and also a reply notice (Ex-D2) to the statutory demand notice (Ex-P3) issued by the complainant under Section 138 of the NI Act. Srinivasan (DW2) corroborated the evidence of the accused. Admittedly, the accused has not denied his signature in the cheque.

14. Both Courts have rejected Exs-D1 and D2 on the ground that the complaint (Ex-D1) is merely a copy of the complaint that is said to have been given to the police and there is no material to show that the police had received the complaint and acknowledged the same and similarly, there is no material to show that the reply notice (Ex-D2) was sent to the complainant or to his counsel.

15. This Court perused the original records and found out that there are no materials to show that the accused had really given the police complaint for the loss of cheques and had issued the reply notice (Ex-D2). The accused did not establish that he had necessary

funds when he had issued the letter to his bank for "Stop

²(2019) 4 SCC 197

Payment". The reason given by the accused in his evidence that the complainant had stolen the cheque and when he confronted the complainant after the receipt of the statutory demand notice (Ex-P3) and the complainant told him that he would not precipitate the matter further, etc., are unbelievable.

16. In view of the aforesaid discussion, this Court does not find any infirmity 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), who shall make it form part of the records in Crl.R.C.No.547 of 2012. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with the this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

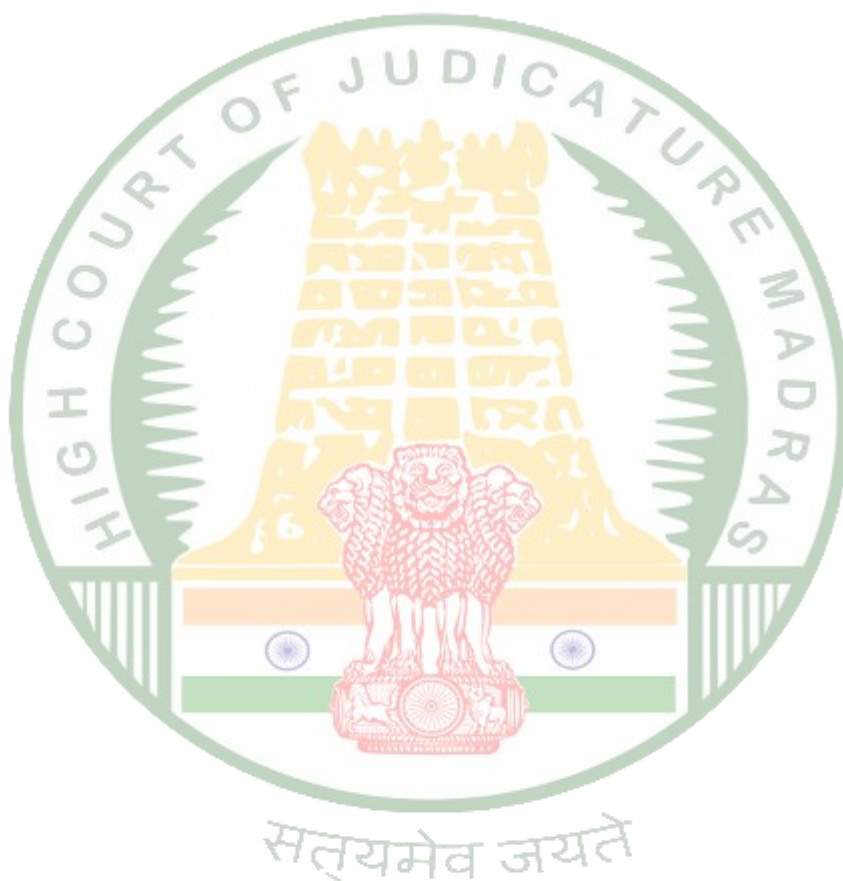
nsd
To

1. The Judicial Magistrate No.II,
Coimbatore.
 2. The Additional District Judge,
(Fast Track Court No.III),
Coimbatore.
 3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.
- with a direction to return the
original records to the Courts
below concerned

+1 cc to Mr.M.N.Balakrishnan Advocate sr96134

Cr1.R.C.No.547 of 2012

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