

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.850 of 2012

G.Vijayakumar

..Petitioner/Appellant/Accused

Vs.

K.Senthilrajan

.. Respondent/Respondent/  
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 08.07.2011 passed in C.A.No.83 of 2010 on the file of the District and Sessions Court No.II, Kanchipuram, modifying the judgment and order 15.04.2009 passed in C.C.No.9 of 2008 on the file of the Judicial Magistrate Court No.I, Kanchipuram.

For Petitioner : Mr.M.Krishnamoorthy

For Respondent : Mr.T.D.K.Govindarajan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 08.07.2011 passed in C.A.No.83 of 2010 on the file of the District and Sessions Court No.II, Kanchipuram, modifying the judgment and order 15.04.2009 passed in C.C.No.9 of 2008 on the file of the Judicial Magistrate Court No.I, Kanchipuram.

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 a sum of Rs.10,00,000/- on 09.01.2006 for his business purposes; the accused was running a hardware shop, from where,

the complainant purchased goods worth of Rs.50,000/- and adjusted the same towards the debt; thus, the accused was due a sum of Rs.9,50,000/-, towards which, he gave a cheque (Ex-P1) dated 25.09.2007 bearing No.231358, drawn on ICICI Bank; the complainant presented the said cheque (Ex-P1) on 26.09.2007 in Central Co-operative Bank, Kanchipuram and the same was returned with the endorsement "Insufficient Funds" vide return memo (Ex-P2); therefore, the complainant issued a statutory demand notice (Ex-P4) dated 23.10.2007, which was received by the accused on 26.10.2007 vide postal acknowledgment card (Ex-P5).

4. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.9 of 2008 before the Judicial Magistrate No.I, Kanchipuram, 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 five exhibits.

6. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, no witness was examined nor any document marked.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.04.2009 in C.C.No.9 of 2008, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year rigorous imprisonment and to pay a sum of Rs.10,00,000/- as compensation to the complainant, in default to undergo three months simple imprisonment.

8. The appeal in C.A.No.83 of 2010 filed by the accused was partly allowed by the District and Sessions Court No.II, Kanchipuram, inasmuch as the sentence of one year rigorous imprisonment was set aside and in lieu of that, six months time was given to the accused to pay the compensation of Rs.10,00,000/- to the complainant, in default to undergo twelve months simple imprisonment.

9. Challenging the concurrent findings of guilt 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.Krishnamoorthy, learned counsel for the accused and Mr.T.D.K.Govindarajan, learned counsel for the complainant.

11. The learned counsel for the accused submitted that the accused had died. But, he did not produce the death certificate.

12. When a revision is admitted, the death of the revision petitioner will not automatically abate the same. Hence, it is imperative for this Court to go into the records in order to find out the correctness, legality and propriety of the judgments and orders passed by the Courts below.

13. 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.<sup>1</sup> Very recently, in Bir Singh vs. Mukesh Kumar<sup>2</sup>, 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)

14. The complainant, in his evidence, has stated about the loan of Rs.10,00,000/- that was taken by the accused on 09.01.2006, the purchase of goods worth of Rs.50,000/- by him from the hardware shop of the accused, the issuance of the impugned cheque (Ex-P1) dated 25.09.2007 for Rs.9,50,000/- by the accused, the dishonour of the cheque (Ex-P1), the issuance of the statutory demand notice (Ex-P4), its receipt by the accused and the failure of the accused to comply with the demand.

15. In the cross-examination of the complainant, the accused had taken a defence that he had given a blank, but, signed cheque to the complainant for investing in the business, which, they both wanted to start and the said business did not go through, despite which, the complainant had presented the cheque, which suggestions have been denied by the complainant.

16. Even when the accused was examined under Section 313 Cr.P.C., he did not proffer any plausible explanation as to the circumstances, under which, his cheque (Ex-P1) came into the hands of the complainant. The accused has not denied the receipt

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1(2004) 7 SCC 659

2(2019) 4 SCC 197

of the statutory demand notice (Ex-P4) and also his signature in the impugned cheque (Ex-P1).

17. 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<sup>3</sup>, which has not been done in this case.

18. In view of the foregoing discussion, this Court does not find any judgments and orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits.

Sd/-  
Asst.Registrar (CS VI )

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate No.I,  
Kanchipuram.
2. The District and Sessions Judge,  
District Sessions Court No.II,  
Kanchipuram.
3. The Section Officer with a direction to return the  
(Crl.Side) original records to the Courts  
Madras High Court, below concerned  
Chennai - 104.

+1 cc to Mr.M.Krishnamoorthy Advocate sr95513

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aa26/12/2019

3(2010) 11 SCC 441

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