

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2019

PRONOUNCED ON : 24.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1133 of 2013

Prabhu Senathipathy .. Petitioner/Appellant
Accused

Vs

Balamurugan ... Respondent/Respondent
Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 01.07.2013 passed by the IV Additional District Sessions Judge, Bhavani in C.A.No.33 of 2012 confirming the judgment and order dated 19.01.2012 passed by the Judicial Magistrate, Bhavani in S.T.C.No.1430 of 2010.

For Petitioner : Mr.L.Sharathkumar

For Respondent : Mr.K.Kalaivanan

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 01.07.2013 passed by the IV Additional District Sessions Judge, Bhavani in C.A.No.33 of 2012 confirming the judgment and order dated 19.01.2012 passed by the Judicial Magistrate, Bhavani in S.T.C.No.1430 of 2010.

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, he was doing chemical business in Bhavani town and the accused was his good friend; on 10.04.2009, the accused borrowed Rs.1,00,000/- for his urgent needs and issued two cheques for Rs.50,000/- each dated 11.05.2009 (Ex.P1) and 14.05.2009 (Ex.P2); he (complainant) presented the first cheque dated 11.05.2009 (Ex.P1) on 11.05.2009 and the same was returned with the endorsement "funds insufficient" vide return memo (Ex.P3); subsequently, he (complainant) presented the second cheque

dated 14.05.2009 (Ex.P2) on 14.05.2009 and the same was returned with the endorsement "funds insufficient" vide return memo (Ex.P4); he (complainant) issued a statutory demand notice dated 21.05.2009 (Ex.P5), which was received by the accused on 23.05.2009 vide acknowledgment card (Ex.P6); the accused issued a reply notice dated 09.06.2009 (Ex.P7); since the accused did not make the payment, the complainant filed S.T.C.No.1430 of 2010 before the Judicial Magistrate, Bhavani against the accused for the offence 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 P8. The accused examined Suguna (D.W.1) and Saikannan (D.W.2), Managers of Canara Bank, Bhavani Branch, where the accused is having his account and marked Exs.D1 and D2, in order to show that bank commission was not deducted for dishonouring the two cheques.

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 19.01.2012 in S.T.C.No.1430 of 2010, 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 a sum of Rs.1,00,000/- to the complainant as compensation. The appeal in C.A.No.33 of 2012 that was filed by the accused was dismissed by the IV Additional District and Sessions Court, Bhavani on 01.07.2013. Challenging the concurrent findings of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8. Heard the learned counsel for the parties.

9. Learned counsel for the accused submitted that the complainant was a partner in Priya Finance, where the father of the accused had borrowed Rs.50,000/- two years back, for which, the accused had given seven blank but, signed cheques as security, which have been misused by the complainant.

10. Per contra, learned counsel for the complainant refuted the contentions.

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

12. 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."

12.1. 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."

12.2. 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."

13.The complainant has stated that the accused had borrowed Rs.1,00,000/- on 10.04.2009 and had given two cheques, which was dishonoured, when presented. In the cross-examination, the complainant has stated that he did not present the cheques through his bank, instead, presented the same directly in the bank of the accused, since the cheques were not M.I.C.R. ones, that is why, no service charges were deducted from the account of the accused. Suguna (D.W.1) and Saikannan (D.W.2), have stated in the cross-examination that the complainant had presented the two cheques and the bank had issued the return memos (Ex.P3 and Ex.P4). The accused could have examined his father in support of his defence, which was not true. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, the same has not been done in this case. Therefore, this Court does not find any infirmity or illegality in the findings arrived at by the two Courts below, warranting interference, especially in the light of the recent judgment of the Supreme Court in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019).

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. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gya

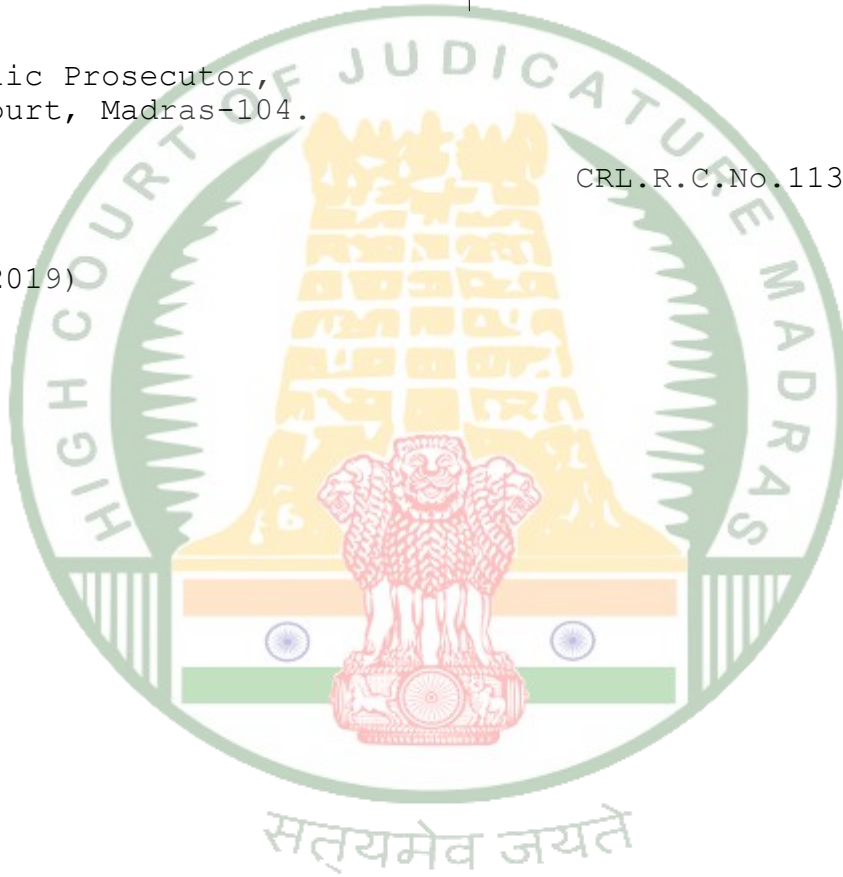
To

- 1.The IV Additional District
Sessions Court,
Bhavani.
- 2.The Judicial Magistrate Court,
Bhavani.
- 3.The Chief Judicial Magistrate,
Erode.
- 4.The Public Prosecutor,
High Court, Madras-104.

Records if any to be
sent as ordered by the
Court.

CRL.R.C.No.1133 of 2013

PVS (CO)
CB(28/11/2019)



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