

BAIL SLIP

That the Appellant/Accused namely S.Karthikayan was released on bail as per order this court dated 17.09.2013 in MP.No. 1/13 in CrI.Rc.No. 1134/13.

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.1134 of 2013

S.Karthikeyan .. Petitioner/ Accused

Vs

R.V.Rangasamy ... 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.34 of 2012 confirming the judgment and order dated 19.01.2012 passed by the Judicial Magistrate, Bhavani in S.T.C.No.3337 of 2010.

For Petitioner : Mr.M.Guruprasad

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.34 of 2012 confirming the judgment and order dated 19.01.2012 passed by the Judicial Magistrate, Bhavani in S.T.C.No.3337 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, the accused was well known to him and therefore, he gave him a hand loan of Rs.75,000/-, towards which, the accused issued a cheque for the said sum dated 16.03.2009 (Ex.P1); he (complainant) presented the cheque and the same was returned on 24.03.2009 with the endorsement "funds insufficient" vide return memo (Ex.P2); he (complainant) issued a statutory demand notice dated 16.04.2009 (Ex.P4), which was received by the accused on 17.04.2009 vide acknowledgment card (Ex.P5); since the accused

did not make any payment, he (complainant) initiated a prosecution in S.T.C.No.3337 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 P5.

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

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.3337 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.75,000/- to the complainant as compensation. The appeal in C.A.No.34 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 accused and the complainant.

9. Learned counsel for the accused submitted that the complainant has not established the debt, inasmuch as he was not able to say the date on which the hand loan was taken.

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

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

12. Before adverting 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 reappraise 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. In this case, the accused has not denied the issuance of the cheque and his signature therein and not given

any explanation, as to how his cheque came into the hands of the complainant. Just because, the complainant was not able to remember, the exact date on which the hand loan was given, that cannot by itself be a reason to disbelieve his testimony. 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 [2010 (4) CTC 118], yet, he has failed to do the same. That apart, 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 which reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall...."

Therefore, this Court does not find any infirmity or illegality in the findings arrived at by the two Courts below, warranting interference.

The trial Court is directed to secure the accused and commit him in 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 if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate Court,
Bhavani.
- 2.Do Thro The Chief Judicial Magistrate,
Erode.
- 3.The IV Additional District Sessions Court,
Bhavani.

CRL.R.C.No.1134 of 2013

MG(CO)
GN(27/11/2019)

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