

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2019

DELIVERED ON : 25.10.2019

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Cr1. R.C.No. 1165 of 2013
and
M.P.No.1 of 2013

R.Srinivasan ..Revision Petitioner/Accused

Vs.

Vinoth Kumar ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to set aside the judgment dated 31.07.2013 passed in C.A.No.13 of 2013 by the learned III Additional District and Sessions Judge, Salem confirming the judgment of conviction and sentence passed in S.T.C.No.788 of 2011 dated 17.01.2013 by the Judicial Magistrate No.III, Salem and acquit the petitioner.

For Petitioner : Mr.R.Manickavel

For Respondent : Mr.M.Naraayanaswamy

O R D E R

This Criminal Revision has been filed to set aside the judgment and order dated 31.07.2013, passed by the learned III Additional District and Sessions Judge, Salem, in C.A.No.13 of 2013, confirming the judgment of conviction and sentence dated 17.01.2013 passed by the learned Judicial Magistrate No.III, Salem, in S.T.C.No.788 of 2011 and to acquit the petitioner.

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.3,50,000/- on 15.03.2011 as a hand loan for his urgent business purpose and on the same day, issued two post dated cheques, viz., cheque dated 16.01.2011 for Rs.1,50,000/-

(Ex.P.1) and cheque dated 15.05.2011 for Rs.2,00,000/- (Ex.P.2); when the complainant presented the two cheques, they were returned unpaid on the ground "funds insufficient" vide bank intimation dated 17.06.2011 (Ex.P.3); the complainant issued a statutory demand notice dated 25.06.2011 (Ex.P.5) which was received by the accused on 27.06.2011 vide Acknowledgment Card (Ex.P.6); the accused issued a reply notice dated 02.07.2011 (Ex.P.7) disputing the debt, therefore, the complainant initiated a prosecution in S.T.C.No.788 of 2011 before the Judicial Magistrate No.III, Salem under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act"), against the accused.

4. On the side of the complainant, the complainant examined himself as P.W.1 and also one Mani as P.W.2 and marked Exs.P.1 to P.7. The accused examined one Mayilkannan as D.W.1 and marked Exs.D.1 to D.5.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 17.01.2013 in S.T.C.No.788 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo 3 months simple imprisonment and pay a fine of Rs.1,000/-, in default to undergo 1 month simple imprisonment.

6. The appeal in C.A.No.13 of 2013 that was filed by the accused challenging the judgment and order dated 17.01.2013 passed by the trial Court was dismissed by the III Additional District and Sessions Court, Salem on 31.07.2013.

7. Challenging the concurrent findings of the two Courts below, the accused has preferred the present revision under Section 397 r/w. 401 Cr.P.C.

8. Heard the learned counsel for the accused and the learned counsel for the complainant.

9. The learned counsel for the accused submitted that the accused has established through the evidence of Mayilkannan (D.W.1) and Exs.D.1 to D.5 that the signed but blank cheques that were kept in the office of the accused were handed over by Mayilkannan to the complainant, with which the present case has been foisted. He also contended that the complainant had failed to prove the debt inasmuch as he has stated in the cross-examination that he does not remember the date on which the accused had taken the hand loan.

10. Per contra, the 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 it can be exercised only if the High Court finds that there is an error apparent on the face of the record. For better appreciation, the relevant portion of the said judgment 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."

13. While exercising revisional powers under Section 397 read with 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.”

14. 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."

15. Coming to the case at hand, the complainant has stated that the accused was known to him and on account of the close acquaintance, he had given the loan of Rs.3,50,000/- on 15.03.2011 to the accused. The complainant also examined one Mani as P.W.2 who has stated that the complainant was working under him earlier and thereafter, the complainant started his own brokerage business and was earning Rs.10,000/- per month. Mani (P.W.2) further stated that he knows the complainant and the accused and also about the loan transaction between them. In response to the statutory notice dated 25.06.2011 (Ex.P.5), the accused issued a reply notice dated 02.07.2011 (Ex.P.7), in which he has denied the liability, but had stated that he does not remember as to how the two cheques went into the hands of the complainant and therefore, he reserves his right to issue a rejoinder notice in detail.

16. After the complainant initiated the prosecution in S.T.C.No.788 of 2011 before the learned Judicial Magistrate III, Salem, the accused issued a legal notice dated 13.09.2011 (Ex.D.5) to Mayilkannan (D.W.1). In that notice, the accused has stated that Mayilkannan was working as Office Assistant under him and at that time, he criminally conspired with Vinoth Kumar (complainant herein) to cheat him by handing over the signed cheques to him (Vinoth Kumar) and that Vinoth Kumar had misused two of the cheques bearing Nos.344499 and 344500 for filing the prosecution in S.T.C.No.788 of 2011. Mayilkannan (D.W.1) has promptly sent a reply notice dated 09.11.2011 (Ex.D.1) with a copy marked to Vinoth Kumar accepting the allegations and stating that he had handed over the two impugned cheques to Vinoth Kumar (complainant herein). Both the Courts have disbelieved this defence of the accused because it is obvious

that the defence has been set up by the accused in collusion with his employee Mayilkannan (D.W.1).

17. Both the Courts have disbelieved the evidence of Mayilkannan (D.W.1) and this Court has no reasons to disagree with those findings. Had those cheques been really stolen, the accused would have issued "stop payment instructions" to his bank. The accused has not denied his signature in the cheques. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, yet, in this case, even that has not been done by the accused and instead, a false defence has been set up by the accused.

In the result, this criminal revision stands dismissed as being devoid of merits and the judgments of conviction of the accused passed by the two Courts below are confirmed. The trial Court is directed to secure the accused and commit him to prison for undergoing the sentence. If any amount has been deposited by the accused either in the Appellate Court or trial Court in connection with this case, the same shall be disbursed with accrued interest, if any, to the complainant or to his legal heirs, as the case may be. Connected miscellaneous petition is closed. Registry is directed to send back the original records to the Courts concerned immediately.

Sd/-
Asst.Registrar (Insp cell)

/true copy/

Sub Asst. Registrar

bri

To

1. The III Additional District and Sessions Judge,
Salem.

2. The Principal Sessions Judge, Salem

3. The Judicial Magistrate No.III,
Salem.

4. The Chief Judicial Magistrate
Salem

5. The Section Officer
(Criminal Section) Records
High Court, Madras.

+1 cc to M/s.M.Narayanaswsamy Advocate sr89552

Crl. R.C.No. 1165 of 2013

aa04/12/2019



WEB COPY