

Bail Slip

The Petitioner/Accused Viz., T.Agoramurthy, was directed to be released on bail as per the order of this court dated 25/09/2013 in CrI.M.P.1/2013 in CrI.RC No.1187 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.10.2019

DELIVERED ON: 04.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.R.C. No.1187 of 2013

T. Agoramurthy ... Petitioner/Appellant/Accused

vs.

M. Sundaram ...Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 02.08.2011 passed by the District and Sessions Judge at Nagapattinam in C.A. No.41 of 2008 confirming the judgment and order dated 16.06.2008 passed in S.T.C. No.3358 of 2006 on the file of the Judicial Magistrate No.I, Mayiladuthurai and acquit the petitioner from the charge under Section 138 of the Negotiable Instruments Act, 1881.

For petitioner :M/s. R. Muruga Bharathi

For respondent :Notice served

ORDER

Challenge in this criminal revision is to the judgment and order dated 02.08.2011 passed by the District and Sessions Judge at Nagapattinam in C.A.No.41 of 2008 confirming the judgment and order dated 16.06.2008 passed in S.T.C. No.3358 of 2006 on the file of the Judicial Magistrate No.I, Mayiladuthurai.

2 For the sake of convenience, the petitioner and the respondent are referred to as accused and complainant respectively.

3 It is the case of the complainant that the accused had borrowed a sum of Rs.70,000/-, towards which, he (accused) gave a cheque dated 03.08.2006 (Ex.P.1), which, when presented, was returned unpaid with the endorsement "insufficient funds" vide return memo dated 11.08.2006 (Ex.P.2); the complainant issued a statutory demand notice dated 25.08.2006 (Ex.P.3), which was received by the accused on 28.08.2006 vide acknowledgment due card (Ex.P.4); the accused issued a reply notice dated 07.09.2006 (Ex.P.5) repudiating the debt; since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C. No.3358 of 2006 before the Judicial Magistrate No.I, Mayiladuthurai under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") against the accused.

4 The complainant examined himself as P.W.1 and marked Exs.P.1 to P.5.

5 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and did not offer any plausible explanation as to how the cheque issued by him came into the hands of the complainant. No witness was examined on the side of the accused nor any document marked.

6 After considering the evidence on record and hearing either side, the Trial Court, vide judgment and order dated 16.06.2008 in S.T.C. No.3358 of 2006, convicted the accused under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Out of the fine amount of Rs.5,000/-, a sum of Rs.2,500/- was directed to be paid as compensation to the complainant.

7 The appeal in CrI.A. No.41 of 2008 that was preferred by the accused was partly allowed by the Sessions Court,

Nagapattinam on 02.08.2011 by reducing the substantive sentence of one year simple imprisonment alone to six months simple imprisonment.

8 Challenging the concurrent findings of the two Courts below, the accused has preferred the instant criminal revision invoking Section 397 r/w Section 401 Cr.P.C.

9 Heard Mr. R. Muruga Bharathi, learned counsel for the accused.

10 The learned counsel for the accused submitted that the accused has issued a reply notice dated 07.09.2006 (Ex.P.5) stating that he had borrowed a sum of Rs.1 lakh on 23.02.2006 from one Mohan and had issued a signed, but, blank cheque to the said Mohan and that he had already paid substantial amounts to the said Mohan, despite which, the said Mohan handed over the impugned cheque to the complainant, with which, the complainant has launched the present prosecution.

11 Before advertng to the submissions made by the learned counsel for the accused, it may be necessary to state here that, 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.¹

"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,

1 [(2004)7 SCC 659]

"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 The aforesaid legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar*², wherein, the Supreme Court formulated the following question of law :

"(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"

13 The answer of the Supreme Court to the aforesaid question of law 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."

14 The complainant, in the examination-in-chief, has stated about the debt of Rs.70,000/-, the issuance of the impugned cheque, the dishonour of the impugned cheque, the issuance of the statutory demand notice and the receipt thereof by the accused and the receipt of the reply notice from the accused. In the cross-examination by the complainant (P.W.1), the accused has not denied his signature in the impugned cheque. In fact, in the cross-examination, the complainant has stated that the accused had asked for the loan on 7th July and he gave the loan to him. He (complainant) has further stated that he has given hand loans to the accused on two earlier occasions, the first amount being Rs.10,000/- and the second amount being Rs.15,000/-; these loans were given because the accused was well known to him and he did not even ask for interest; since the accused had returned those amounts, he gave the present loan of Rs.70,000/-. The complainant has denied the suggestion that the impugned cheque was given to Mohan, who, in turn, had handed over it to him (complainant) for initiating the present prosecution.

15 Further, except sending the reply notice (Ex.P.5) and making suggestions, the accused has not produced any material, much less any credible material, to show that the impugned cheque was given to Mohan. The said Mohan was not examined. Even in the Section 313 Cr.P.C. statement, the accused has not stated anything about this. 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.

16 In view of the foregoing discussion, the conviction of the accused of the charge under Section 138 of the NI Act by the trial Court and the appellate Court is confirmed. Coming to substantive sentence of imprisonment, the sentence of six months simple imprisonment modified by the appellate Court is confirmed.

In fine, this criminal revision is dismissed. The trial Court is directed to secure the presence of the accused and commit him to prison for undergoing the period of sentence. Liberty is given to the accused to approach this Court for compounding the offence under Section 147 of the NI Act even after he is taken into custody. 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.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1 The District and Sessions Judge,
Nagapattinam.

2 The Judicial Magistrate No.I,
Mayiladuthurai.

3 The Deputy Registrar(Crl. Side)

High Court of Madras
Chennai 600 104.

with a
direction to
transmit the
original records to
the respective
Courts, forthwith

+1cc to M/s.R.Muruga Bharathi, Advocate Sr.91083

Crl.R.C. No.1187 of 2013

RR[co]
srg 17/12/2019