

Bail Slip

The Appellant/Accused, namely P.Viswanathan S/o.Planisamy was released on bail as per order of this Court dated 05.06.2013 in MP.NO.1/13 IN CRL RC.NO.487/2013 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2019

DELIVERED ON: 24.10.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
Crl.R.C.No.487 OF 2013

P.Viswanathan ... Petitioner

Vs.

P.Parthiban ... Respondent

Criminal Revision Petition filed under Section 397 r/w. 401 Cr.P.C to set aside the order dated 14.08.2012 passed by the First Additional District and Sessions Judge in C.A.No.125 of 2012 confirming the order of conviction and sentence dated 19.03.2012 passed by the Judicial Magistrate Fast Track Court No.II, Coimbatore in C.C.No.65 of 2011.

For Petitioner : Mr.K.Mohanraj

For Respondent : Mr.Su.Srinivasan

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O R D E R

This Criminal Revision Petition has been preferred challenging the order dated 14.08.2012 passed by the First Additional District and Sessions Judge, Coimbatore in C.A.No.125 of 2012 confirming the order of conviction and sentence dated 19.03.2012 passed by the Judicial Magistrate, Fast Track Court No.II, Coimbatore in C.C.No.65 of 2011.

2. For the sake of convenience, the parties will be referred to as the complainant and the accused.

3. It is the case of the complainant that on 18.12.2008, the accused borrowed a sum of Rs.4,00,000/- and executed a demand promissory note agreeing to pay the amount on demand with interest at the rate of 24% per annum. Towards the said liability, the accused issued a cheque dated 19.07.2010 (Ex.P1) for Rs.4,00,000/-. The complainant presented the cheque and the same was returned on 20.07.2010 with an endorsement "Insufficient Funds" vide Bank memo (Ex.P2). The complainant issued a statutory demand notice dated 26.07.2010 (Ex.P3), which was received by the accused on 29.07.2010 by acknowledgment card (Ex.P4). The accused sent a reply notice dated 09.08.2010 (Ex.P5) disputing the debt. Therefore, the complainant initiated a prosecution in S.T.C.No.715 of 2010 before the Judicial Magistrate, Fast Track Court No.II, Coimbatore for trial.

4. The complainant examined himself as PW1 and marked Exs.P1 to P6. Ex.P6 is the signature of the accused in the promissory note dated 06.09.2008. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as DW1 and his friend Dinesh Kumar as DW2 and marked Exs.D1 and D2.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.03.2012 in C.C.No.65 of 2011, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.4000/-, in default to undergo two months simple imprisonment. The appeal in C.A.No.125 of 2012 that was filed by the accused was dismissed by the First Additional District and Sessions Judge, Coimbatore on 14.08.2012. Challenging the concurrent findings of the two Courts below, the accused has filed the present criminal revision under Section 397 r/w.401 Cr.P.C.

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

7. Learned counsel for the accused submitted that the impugned cheque was given only as a security to one Ravi, the brother-in-law of the accused and some dispute arose between Ravi and the accused, pursuant to which Ravi had handed over the impugned cheque to the complainant for initiating the present prosecution. Therefore, the learned counsel contended that both the Courts below had failed to appreciate the evidence of DW1 and DW2 in the right perspective.

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

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

10. 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."

10.1. 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."

10.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the 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"

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."

11. The complainant was cross examined extensively by the accused and in the cross examination, he stated that the accused was introduced to him by one Sakthivel, who is none other than the husband of the younger sister of the accused. In the cross-examination, the complainant has clearly stated that the sum of Rs.4,00,000/- was given to the accused in the presence of Sakthivel and the promissory note was signed by the accused.

12. The accused does not deny the fact that the said Sakthivel is his younger sister's husband. However, it is the case of the accused in his evidence that he had joined a Chit that was run by one Ravi, who is the husband of his elder Sister and the impugned cheque and promissory note were given to Ravi, who inturn had handed over the same to the complainant.

13. Both the Courts below have rightly disbelieved this defence in the light of the assertion by the complainant that the accused was introduced to him by Sakthivel, who is the husband of the younger sister of the accused. The accused could have easily examined either Ravi or Sakthivel to call the bluff of the complainant, which he did not do. It is true that the burden under Section 139 of the Negotiable Instruments Act can be discharged by the accused by preponderance of probabilities as held by the three Judges Bench of the Supreme Court in Rangappa Vs. Sri Mohan reported in (2010) 11 SCC 4413. Unfortunately, the accused had failed to discharge the said burden even by preponderance of probabilities. This Court does not find any infirmity in the concurrent findings of the two Courts below warranting interference.

In the result, this Criminal Revision Petition is dismissed. The trial Court is directed to secure the accused and commit him

in prison for serving the sentence. Registry is directed to send the original records to the appellate Court and the trial Court forthwith.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa
To

1. The Judicial Magistrate Fast Track Court No.II
Coimbatore

2.Do thro the Chief Judicial Magistrate,Coimbatore

3.The First Additional District and Sessions Judge
Coimbatore

4.The Deputy Registrar, } with a direction to send
Criminal Section, } the original records to the
High Court, Madras. } two Courts below forthwith.

5.The Public Prosecutor,
High Court, Madras - 600 104.

Copy to
The Section Officer, ER Section, High Court, Chennai.

+1cc to Mr.Mohanraj , Advocate SR.No. 89797

Cr1.R.C.No.487 of 2013

A.SK(26/11/2019)

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