

Accused in Bail

Sivashanmugam Petitioner was released on bail by the order of this Court made in MP.NO.1/13 IN CrI. R.C. No.509 of 2013.
IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 25.10.2019

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH

CrI. R.C. No.509 of 2013

Sivashanmugam ... Revision Petitioner

Vs.

Vedharaman ... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to set aside the order of conviction rendered by the Judicial Magistrate Court, Thiruthuraipoondi in C.C.No.396 of 2005 dated 18.05.2007 and confirmed by the 1st Lower Appellate Court in C.A.No.9 of 2009 dated 13.08.2012 on the file of the District & Sessions Court, Thiruvarur.

For Petitioner : Mr.K.M.Subrahmaniam

For Respondent : Mr.M.Vijayakumaran

O R D E R

This Criminal Revision has been filed to set aside the judgment and order dated 18.05.2007, passed by the learned Judicial Magistrate Court, Thiruthuraipoondi in C.C.No.396 of 2005, confirming the judgment of conviction and sentence passed by the District & Sessions Court, Thiruvarur in C.A.No.9 of 2009 dated 13.08.2012.

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 knew the accused well, as both of them hail from the same village and so, when the accused asked for a loan for his business purpose, he gave a sum of Rs.8,60,000/- on 15.01.2005; when the complainant demanded the return of the loan, the accused gave a cheque dated 31.01.2005 (Ex.P.1), which, when presented

by the complainant, was returned with the endorsement "Insufficient funds" on 04.02.2005, vide bank memo (Ex.P.2); the complainant issued a statutory demand notice dated 14.02.2005 (Ex.P.3), which was received by the accused on 15.02.2005 as could be seen from the postal acknowledgement card (Ex.P.4); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.396 of 2005 in the Court of Judicial Magistrate, Thiruthuraipoondi under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act").

4. To prove his case, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.4.

5. 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 the side of the accused nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 18.05.2007 in C.C.No.396 of 2005, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two months simple imprisonment and also pay a sum of Rs.8,60,000/- as compensation in default. The appeal in C.A.No.9 of 2009 filed by the accused was dismissed by the District and Sessions Court, Thiruvarur on 13.08.2012.

7. Challenging the concurrent findings of the two Courts below, the accused has preferred the present criminal revision under Section 397 r/w. 401 Cr.P.C. with a delay of 115 days, which is condoned by this Court in MP.No.1 of 2013. Thereafter, the revision petition was admitted and at that time of admission on 23.04.2013, this Court suspended the sentence and ordered the release of the accused on bail without surrendering before the trial Court, on condition that he should deposit Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) to the credit of C.C.No.396 of 2005 before the trial Court.

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

9. 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."

10. 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."

11. 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."

12. With regard to the contentions of the learned counsel for the accused that the body of the cheque was not filled by the accused, and therefore, the prosecution is vitiated, the answer to this submissions lies in Section 20 of the NI Act. In *Bir Singh supra*, the Supreme Court has held as follows:

"33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

13. Learned counsel for the accused submitted that the complainant would have obtained some document or the other, while giving such a huge loan of Rs.8,60,000/- and hence, the assertion of the complainant that he gave the hand loan on 15.01.2005 sounds improbable. He also contended that the complainant had not filed his income tax returns to prove the debt. These contentions have no serious application, 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), 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: "

14. Learned counsel for the accused placed reliance on the judgment of this Court in K.Murali Vs. K.Santhanam and Another (Crl.O.P.No.16498 of 2017 in Crl.A.No.SR33657 of 2017 decided on 06.11.2017), wherein, this Court had disbelieved the assertion of the complainant therein that he had given the hand loan of Rs.44,00,000/- without any documents. In K.Murali supra, this Court was dealing with an appeal against acquittal and in paragraph No.9, this Court has affirmed the findings of the lower Court by giving reasons, whereas in this case, this Court is required to exercise revisional jurisdiction in respect of concurrent findings of the two Courts below.

15. The fact remains that the accused did not reply to the statutory notice that was sent by the complainant. Even in the cross examination of the complainant, the complainant has stated that he has no objection for sending the impugned cheque to the Forensic Science Department for expert opinion. The complainant has clearly stated that the accused was well known to him and therefore, he obliged him by giving the loan. In fact, the accused has, in the cross examination, suggested to the complainant that there were financial transactions between them for a long time and a blank cheque that was given during one such transaction was misused by the complainant by filling it up for filing the present prosecution, which the complainant denied. Thus, even according to the accused, the accused and the complainant have had financial dealings. This supports the case of the complainant that the accused had taken a loan of Rs.8,60,000/- on 15.01.2005 and had given the impugned cheque. 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 had failed to do so. Hence, this Court does not find any infirmity in the findings of the two Courts below warranting interference.

16. In the result, this revision petition is dismissed. 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 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 send back the original records to the Court concerned immediately.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bri/gya
To

1. The Judicial Magistrate Court,
Thiruthuraipoondi.
2. Do thro the Chief Judicial Magistrate, Thiruvarur
(for information)
3. The District & Sessions Court,
Thiruvarur.
4. The Deputy Registrar (Criminal Section),
High Court, Madras.

+lcc to Mr.M.Vijayakumaran , Advocate SR.No. 89517

+lcc to Mr.K.M.Subrahmaniam , Advocate SR.No. 89419

CrI. R.C. 509 of 2013

A.SK(04/11/2019)

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