

Bail Slip

The Petitioner/Accused namely Mr.P.Selvaraj, S/o.P.N.Palanisamy, aged 51 years was directed to release on bail by this Hon'ble Court order dated 16/11/2013 in Mp.No.1/13 in Crl.R.C.No.519/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2019

PRONOUNCED ON : 06.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.519 of 2013

P.Selvaraj

Petitioner/
Accused

Vs

S.K.Subramaniam

Respondent/
Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 11.01.2013 passed by the II Additional District and Sessions Judge, Erode in C.A.No.22 of 2012 confirming the judgment and order dated 22.12.2011 passed by the District Munsif-cum-Judicial Magistrate, Perundurai in C.C.No.122 of 2005.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.I.C.Vasudevan

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 11.01.2013 passed by the II Additional District and Sessions Judge, Erode in C.A.No.22 of 2012 confirming the judgment and order dated 22.12.2011 passed by the District Munsif-cum-Judicial Magistrate, Perundurai in C.C.No.122 of 2005.

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 on 03.12.2004, the accused borrowed Rs.5,00,000/- for his urgent expenses and in discharge of the said liability, issued a cheque dated 03.01.2005 (Ex.P1), which when presented by the complainant on 05.01.2005, returned unpaid with the endorsement "funds insufficient" on 06.01.2005 vide bank memo (Ex.P3); the complainant issued a statutory demand notice dated 19.01.2005 (Ex.P5), which was received by the accused vide postal acknowledgment card (Ex.P7); the accused issued a reply notice dated 04.02.2005 (Ex.P8) repudiating the debt; hence, the complainant initiated a prosecution in C.C.No.122 of 2005 in the Court of the District Munsif-cum-Judicial Magistrate, Perundurai under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

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 P8. The accused examined himself as D.W.1. No document was marked on the side of the accused. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.12.2011 in C.C.No.122 of 2005, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment. The appeal in C.A.No.22 of 2012 that was filed by the accused was dismissed on 11.01.2013 by the II Additional District and Sessions Court, Erode. 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.

7.Heard Mr.N.Manokaran, learned counsel for the accused and Mr.I.C.Vasudevan, learned counsel for the complainant.

8.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."

8.1. 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."

8.2. 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."

9.Mr.Manokaran, learned counsel for the accused contended that even at the earliest point of time, the accused issued a reply notice (Ex.P8) repudiating the debt and explained the circumstances under which, the impugned cheque came into the custody of the complainant. He followed it up by examining himself as D.W.1 and thus, discharged the burden under Section 139 of the NI Act.

10.Per contra, learned counsel appearing for the complainant drew the attention of this Court to paragraph 15 of the trial Court judgment, about which we will discuss in the later part of this order.

11.This Court carefully considered the rival submissions and perused the evidence of the complainant (P.W.1) and the accused (D.W.1). The complainant (P.W.1) has spoken about the debt, issuance of the impugned cheque, its dishonour, issuance of legal notice and receipt of reply notice (Ex.P8). The defence was not able to make any dent in the testimony of complainant (P.W.1) in the cross-examination.

12.It is the specific case of the accused in the reply notice (Ex.P8) dated 04.02.2005 that, he is a rice mill owner and he had transactions with the complainant, who was doing paddy brokerage, in which, the complainant used to supply paddy, for which, the impugned cheque was given as security. It is his further case that he had given the impugned cheque after filling Rs.50,000/- in the numeral portion, which the complainant has manipulated as Rs.5,00,000/-. In the cross-examination of the complainant (P.W.1), he denied that he was a paddy broker and that, he had business relationship with the accused.

13.Mr.Manokaran submitted that after receipt of the reply notice (Ex.P8), the complainant should have denied the averments in the reply notice either in the complaint or in his examination-in-chief. This Court is unable to countenance this argument because, unlike a plaint in a civil case, the complaint in a criminal case needs to disclose only the relevant facts that constitute the offence in question and nothing more. The complainant is not required to repudiate the stand of the accused in the complaint.

14.The accused, who examined himself as D.W.1, has reiterated the averments in the reply notice. Thus, the case of the accused is that, he gave a cheque filling the numeral portion as Rs.50,000/- and the complainant has manipulated the cheque. This Court perused the original cheque (Ex.P1) and does not find any trace of manipulation as alleged by the accused. If Rs.50,000/- is manipulated as Rs.5,00,000/- (Rupees five lakhs), there will be displacement of comma, which is not there. In fact, the complainant (P.W.1), has stated in the cross-examination that he has no objection in sending the impugned cheque for expert opinion. Paragraph 15 of the trial Court judgment, which is extracted below would remove the cloud, if any.

"15.Considering this aspect, the accused filed a petition u/s.45 of Evidence Act, for comparison of the disputed writings in the Ex.P1 along with the admitted writings of the accused signature for expert opinion. As per the order of the Honourable High Court, Madras in CrI.R.C.No.1009/2008, dated 23.7.2009, the same was allowed by the Honourable High Court, Madras and directed to this Court to take steps to send the cheque for comparison of the ink and other writings found on the cheque by Forensic Sciences Department. Based upon the said order, this Court insist to file the admitting writing of the accused before this Court. The accused side filed a memo dated 09.06.2011 and submitted that, unavoid circumstances the accused could not file a registered document of specimen writing before this Court. As per the Memo, the case was adjourned for further proceedings of this case."

15.Mr.Manokaran placed strong reliance on the judgment of the Supreme Court in Vijay Vs. Laxman and Another [(2013) 3 SCC 86], especially paragraph 27. In Vijay (supra), the trial Court and the Court of Session had convicted the accused, but the High Court had acquitted the accused by giving cogent reasons, which reasoning the Supreme Court affirmed. On facts, in Vijay (supra), the accused took a stand that the impugned cheque was given to the father of the complainant in connection with purchase of milk and a quarrel ensued between the accused and the complainant's father, in which, the latter assaulted the former, resulting in a police case against the latter and as a sequel, the complainant's father gave the blank cheque that was given as security by the accused to his son and had the prosecution under Section 138 of the NI Act launched. To prove these facts, the accused had adduced satisfactory evidence, which found acceptance by the High Court and the Supreme Court. However, in the case at hand, the defence theory that the complainant had manipulated the cheque is a far cry.

16.In view of the foregoing discussion, the conviction of the accused by the Courts below for the charge under Section 138 of the NI Act is confirmed.

17.Coming to the sentence of imprisonment, Mr.Manokaran, learned counsel for the accused represented that if four weeks time is granted, the accused would deposit the cheque amount before the trial Court. He also submitted that the accused has earlier deposited some amount in the trial Court, at the time of grant of suspension of sentence and bail.

18.Accordingly, time is granted till 09.12.2019 to the accused to deposit the cheque amount less the amount already deposited, if any before the trial Court. On such deposit, the substantive sentence of imprisonment alone will stand set aside. On the failure of the accused to comply with the said condition within the stipulated time, the sentence of imprisonment imposed by the Courts below will stand revived and the trial Court shall take the accused into custody. It is made clear that there shall not be any extension of time for time limit, for the simple reason that the debt is of the year 2004 and we are now in the year 2019, by which time, the accused could have shown his bona fides by coming forward to settle with the complainant. Even now, the accused is paying only the cheque amount, though twice the cheque amount can be ordered as compensation taking

into consideration the time and money spent by the complainant in prosecuting the accused from 2004 to 2019 before various fora. In the event of the accused complying with the said condition, the monies deposited by the accused shall be disbursed to the complainant. The Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.II Additional District and Sessions Judge,
Erode.

2.The District Munsif-cum-Judicial Magistrate Court,
Perundurai.

3.The Chief Judicial Magistrate,
Erode(For Information)

copy to:

1.The Deputy Registrar,
Criminal Side,
High Court, Madras.

2.The Section Officer,
Criminal Section,
High Court, Madras-104.

+lcc to Mr.N.Manokaran, Advocate sr.92297

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sj(co)
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