

BAIL SLIP

The Petitioner herein/Accused namely V.Natarajan, S/o.Venkatachalam be and hereby was directed to be released on bail as per the order of Honourable Court dated 29.04.2013 made in MP.No.1/2013 in Cr1.RC.No.617/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2019

PRONOUNCED ON : 04.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.617 of 2013

V.Natarajan ... Petitioner/Accused

Vs.

T.Paramasivam ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 14.12.2010 passed in C.C.No.6911 of 2002 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, confirmed by the judgment and order dated 13.08.2012 passed in C.A.No.15 of 2011 on the file of the II Additional Sessions Court, Chennai.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Mr.V.V.Sairam

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 14.12.2010 passed in C.C.No.6911 of 2002 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, confirmed by the judgment and order dated 13.08.2012 passed in C.A.No.15 of 2011 on the file of the II Additional Sessions Court, Chennai.

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

respectively.

3. The facts of the case in a nutshell are as under:

3.1 It is the case of the complainant that on 03.11.2000, the accused borrowed a sum of Rs.8,00,000/- and executed a promissory note (Ex-D1) agreeing to repay the amount on demand with 18% p.a. interest. Towards the said liability, the accused gave a cheque (Ex-P1) dated 10.07.2002 bearing No.920578, for a sum of Rs.6,00,000/-, which, when presented, was dishonoured and returned with the endorsement "Drawer's Signature Differs" vide bank's return memo (Ex-P2) dated 13.07.2002. The complainant issued a statutory demand notice (Ex-P4) dated 24.07.2002, which was received by the accused vide postal acknowledgment card (Ex-P5). Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.6911 of 2002 before the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, for the offence under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act"), against the accused.

3.2 Before the trial Court, the complainant examined himself as PW1 and marked five exhibits.

3.3 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, three witnesses, viz., Dr.Dhariwal (DW1), Sampath (DW2) and Natarajan (DW3)/accused were examined and two exhibits were marked.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 14.12.2010 in C.C.No.6911 of 2002, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo three months simple imprisonment and to pay a sum of Rs.16,00,000/- as compensation, in default to undergo three months simple imprisonment.

3.5 Challenging the above conviction and sentence, the accused preferred an appeal in C.A.No.15 of 2011 before the II Additional Sessions Court, Chennai. The learned Appellate Court Judge confirmed the conviction and sentence imposed on the accused by the trial Court, for the offence under Section 138 of the NI Act, but, reduced the compensation amount from Rs.16,00,000/- to Rs.12,00,000/-, since the cheque amount was only Rs.6,00,000/-.

3.6 Challenging the concurrent findings of fact arrived at by the Courts below, the accused is before this Court under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.R.Ganesh Kumar, learned counsel for the accused and Mr.V.V.Sairam, learned counsel for the complainant.

5. Before advertng to the rival submissions, 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 Kuldeep 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,

"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)

¹ (2004)7 SCC 659

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."

6. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in *Bir Singh Vs. Mukesh Kumar*², 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"

7. 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,

² (2019) 4 SCC 197

in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

8. The learned counsel for the accused submitted that the complainant has not proved the debt satisfactorily and the accused has discharged the burden under Section 139 of the NI Act.

9. In this case, the accused has not denied that the impugned cheque (Ex-P1) relates to his account. The mere factum of signature differing in the cheque will not absolve the accused from the liability under Section 138, ibid. In fact, explanation 1 of Section 464 IPC reads as under:

"Explanation 1 - A man's signature of his own name may amount to forgery".

10. It is the specific case of the complainant that the accused had borrowed a sum of Rs.8,00,000/- and had executed a promissory note for the said amount. Along with the complaint, the promissory note was not filed. Even when the complainant examined himself as PW1, the promissory note was not marked as an exhibit.

11. However, in the cross-examination of the complainant (PW1), he was asked whether he (PW1) has brought the promissory note, for which, the complainant stated in the affirmative and produced the promissory note that he was carrying and the same was marked as Ex-D1. Thus, thanks to the defence, the assertion of the complainant with regard to the giving of the loan stood fortified.

12. In the cross-examination of the complainant (PW1), the defence took a plea that the accused had not borrowed any money; Sampath (DW2) wanted loan from the accused and the accused introduced him to Dr.Dhariwal (DW1); Dr.Dhariwal (DW1) gave loan to Sampath (DW2) on the security cheques given by the accused; a dispute arose between Dr.Dhariwal (DW1) and Sampath (DW2) and therefore, Sampath (DW2) lodged a complaint against Dr.Dhariwal (DW1) and the accused; the accused gave some cheques to Dr.Dhariwal (DW1) which was misused by the complainant (PW1) herein. In support of this contention, the accused produced an agreement (Ex-D2) between the accused and Dr.Dhariwal (DW1). Strangely, in that agreement (Ex-D2), the signature of Dr.Dhariwal (DW1) was not there, which, the accused himself has admitted.

13. The evidence of Dr.Dhariwal (DW1) and Sampath (DW2) do

not support his case. Without declaring them hostile, the defence has put leading questions to the witnesses, which the trial Court has also recorded.

14. The accused examined himself as DW3 and in his evidence, he gave a totally different version of the transaction. The accused did not even confront Dr.Dhariwal (DW1) and Sampath (DW2) with the impugned cheque when they were in the witness box. All these aspects have been considered by the Courts below and rejected.

15. 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 Mohan¹, in this case, the accused has strengthened the complainant's case by marking the promissory note in the cross-examination and has adduced mutually destructive evidence and has, thus, confounded the confusion in his case.

16. In view of the above discussion, this Court does not find any infirmity in the conviction and sentence imposed on the accused by the Courts below, warranting interference. Coming to award of compensation, the sum of Rs.12,00,000/- fixed by the appellate Court by reducing the sum of Rs.16,00,000/- fixed by the trial Court, is confirmed.

As a sequitur, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the sentence. The Registry is directed to return the original records to the Courts below concerned.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Chief Metropolitan Magistrate Egmore
Chennai

1(2010) 11 SCC 441

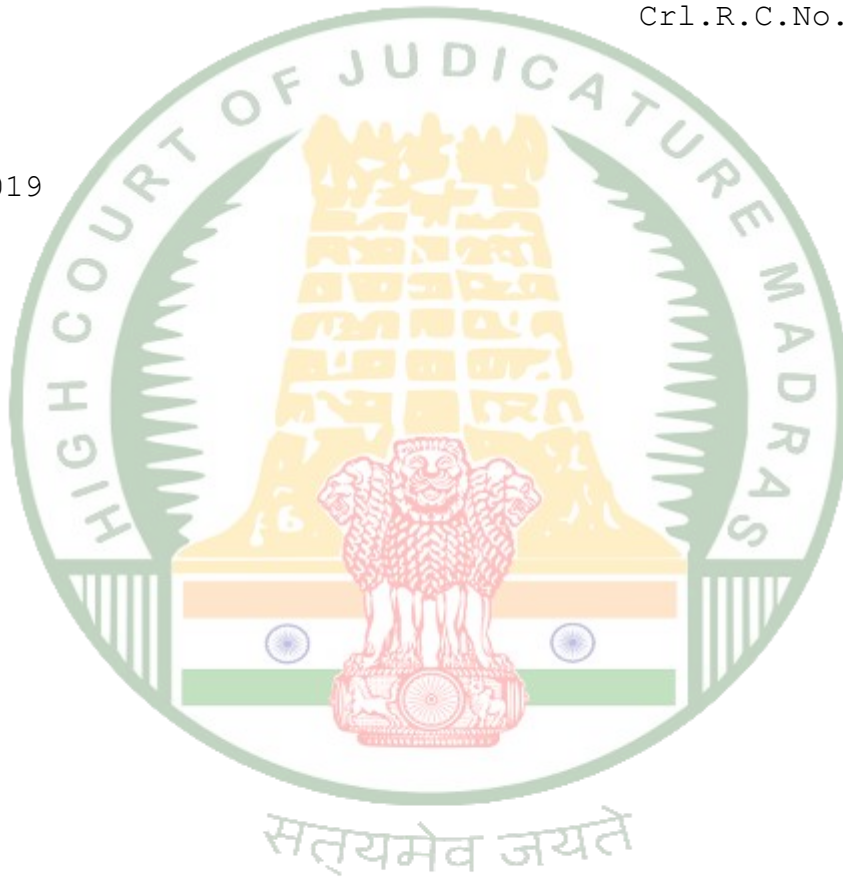
3. The II Additional Sessions Judge,
Chennai.(for Information)

copy to
The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

+1 cc to Mr.R.Ganesh Kumar Advocate sr85151

Crl.R.C.No.617 of 2013

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