

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2019

PRONOUNCED ON : 12.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.625 of 2013

K.Pachaimuthu

Petitioner/Accused

Vs.

Rajendran

.. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 29.01.2013 passed in C.A.No.26 of 2012 on the file of the III Additional District and Sessions Court, Vridhachalam, Cuddalore District, and confirming the Judgment in CC.No.130/2006, dated 19/6/12 by the Judicial Magistrate No.I, Virudhachalam.

For Petitioner : Mr.G.Anbapachozhan
for Mr.M.Ravikumar

For Respondent : Mr.M.R.Jothimanian

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 19.06.2012 passed in C.C.No.130 of 2006 on the file of the Judicial Magistrate Court No.I, Vridhachalam, Cuddalore District, confirmed by the judgment and order dated 29.01.2013 passed in C.A.No.26 of 2012 on the file of the III Additional District and Sessions Court, Vridhachalam, Cuddalore District.

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 23.02.2005,

the accused borrowed a sum of Rs.1,40,000/- agreeing to return the same with interest. In discharge of the said liability, the accused gave a cheque (Ex-P1) dated 28.05.2006 for a sum of Rs.1,61,321/- drawn on ICICI Bank, Neyveli Branch. When the complainant presented the cheque on 05.06.2006 in Karur Vysya Bank, the same was returned on 06.06.2006 with the endorsement "Funds Insufficient" vide bank memo (Ex-P2). The complainant issued a statutory notice (Ex-P3) dated 23.06.2006, which was received by the accused on 01.07.2006 vide postal acknowledgment card (Ex-P4). Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.130 of 2006 before the Judicial Magistrate Court No.I, Vridhachalam, 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 four 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. The accused examined himself as DW1 and Venugopal as DW2, but, did not mark any document.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.06.2012, convicted the accused (DW1) of the offence under Section 138 of the NI Act and sentenced him to undergo three months simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment.

3.5 The appeal in C.A.No.29 of 2012 filed by the accused was dismissed by the II Additional District and Sessions Court, Vridhachalam, on 29.01.2013.

3.6 Challenging the concurrent findings of fact arrived at by the Courts below, the accused (DW1) has preferred the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.G.Anbapachozhan, learned counsel representing Mr.M.Ravikumar, learned counsel on record for the accused (DW1) and Mr.M.R.Jothimanian, learned counsel for the complainant.

5. Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan

Singh Kuldip Singh Anand and Others, etc.¹ Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [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. " (emphasis supplied)

6. The complainant, who examined himself as PW1 has stated in his evidence about the loan of Rs.1,40,000/- that was given by him to the accused (DW1) on 23.02.2005, the issuance of the impugned cheque (Ex-P1) dated 28.05.2006 for a sum of Rs.1,61,321/- by the accused (DW1), dishonour of cheque for insufficiency of funds, issuance of statutory notice (Ex-P3) dated 23.06.2006, the receipt of the same by the accused on 01.07.2006 and the failure of the accused (DW1) to comply with the demand.

7. In the cross-examination of the complainant, it was suggested to him that the accused (DW1) had borrowed only a sum of Rs.40,000/- and at that time, the complainant took the accused to ICICI Bank, opened an account in his (accused) name, obtained cheque book, made the accused (DW1) sign in a blank cheque leaf, filled it up for a sum of Rs.1,61,321/- and has filed the present prosecution, which suggestion, the complainant denied.

8. However, during the pendency of the trial, the accused returned a sum of Rs.1,00,000/- to the complainant and therefore, the complainant was recalled under Section 311 Cr.P.C. and in the cross-examination, he admitted that the accused (DW1) had returned the sum of Rs.1,00,000/-.

9. The accused (DW1), in his evidence, has stated that he borrowed only a sum of Rs.40,000/- from the complainant, the complainant took him to the ICICI Bank, opened an account in his name, obtained the impugned cheque leaf, filled it up for the sum of Rs.1,61,321/- and has initiated the prosecution.

10. In the cross-examination, when the accused (DW1) was questioned as to why he did not reply to the statutory demand

1(2004) 7 SCC 659

2(2019) 4 SCC 197

notice (Ex-P3), he stated that he wanted to amicably settle the matter with the complainant.

11. Venugopal (DW2), friend of the accused (DW1), has stated in his evidence that the accused (DW1) had borrowed a sum of Rs.40,000/- from the complainant and had issued a blank but signed cheque. When he (DW2) was questioned in the cross-examination as to when the sum of Rs.40,000/- was borrowed by the accused (DW1), he stated that he does not remember the date. He (DW2) also stated that he does not know whether the accused (DW1) had an account in the ICICI Bank.

12. The accused (DW1) has not stated in his evidence as to when the bank account was opened. He (accused) could have at least examined the Manager of ICICI Bank to show that the bank account was opened on the introduction of the complainant.

13. The fact remains that the accused (DW1) did not reply to the statutory demand notice (Ex-P3) and during trial, the accused (DW1) gave the sum of Rs.1,00,000/- to the complainant and that is the reason why the trial Court and appellate Court have given a very nominal sentence of three months simple imprisonment.

14. 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 Mohan³, in this case, the accused (DW1) has not even done so.

15. In such perspective of the matter, this Court does not find any infirmity in the conviction and sentence imposed on the accused (DW1) by the Courts below, warranting interference.

In view of the foregoing discussion, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused (DW1) and commit him to prison to serve out the remaining period of sentence. Liberty is given to the accused (DW1) to approach this Court under Section 147, *ibid*, even after he is taken into custody. The Registry is directed to return the original records to the Courts below concerned.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

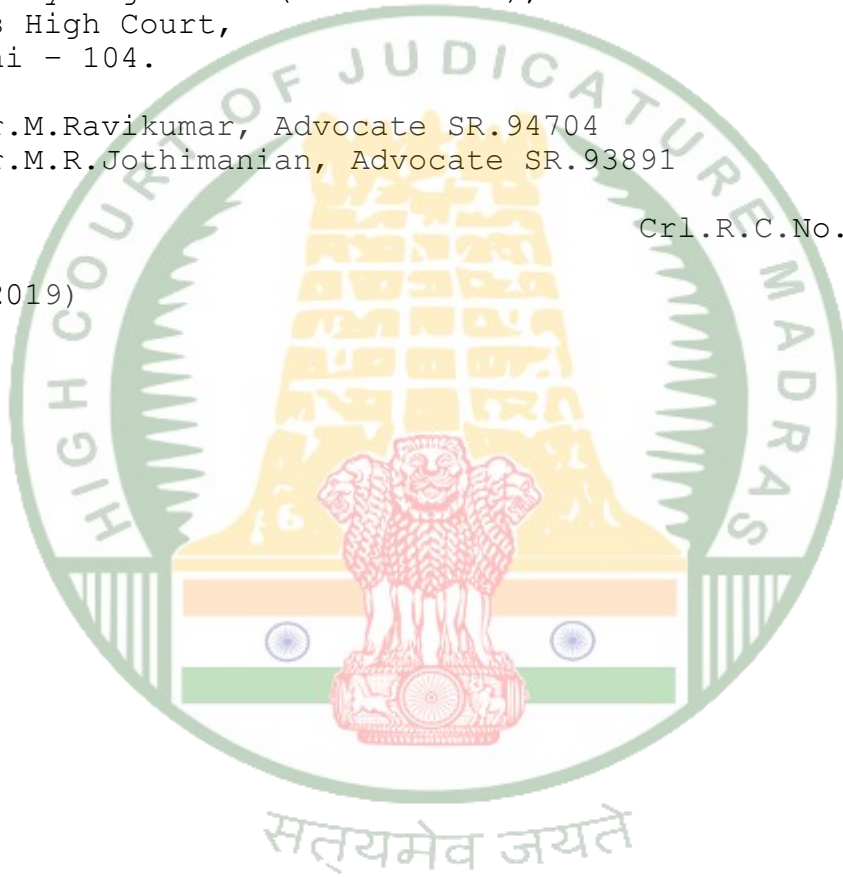
nsd
To

1. The Judicial Magistrate No.I,
Vridhachalam,
Cuddalore District.
2. The III Additional District
and Sessions Judge,
Vridhachalam,
Cuddalore District.
3. The Deputy Registrar (Crl.Section),
Madras High Court,
Chennai - 104.

+1cc to Mr.M.Ravikumar, Advocate SR.94704
+1cc to Mr.M.R.Jothimanian, Advocate SR.93891

Cr1.R.C.No.625 of 2013

SJ(CO)
CB(18/12/2019)



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