

Bail Slip

The Petitioner/Accused viz., N.Fairoskhan, S/o.Noor Mohamed, was released on bail as per order of this Court dated 03/07/2013 in CrI.MP.No.1 & 2 of 2013 in CrI.RC.Nos.837 and 838 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2019

DELIVERED ON : 31.10.2019

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No. 838 of 2013

Fairoskhan ... Revision Petitioner

Vs.

P.Sadiq Babu ... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to set aside the judgment dated 06.04.2013 passed in C.A.No.68 of 2011 by the learned Additional Sessions Judge, Krishnagiri, modifying the sentence to one month simple imprisonment and confirming the compensation amount of Rs.65,000/-, awarded by the Judicial Magistrate, Fast Track Court, Hosur in S.T.C.No.260 of 2011 dated 21.10.2011, convicting and sentencing the petitioner to undergo six months simple imprisonment and to pay compensation amount of Rs.3,55,000/-.

For Petitioner : Mr.Thiruvengadam

O R D E R

This Criminal Revision has been filed to set aside the judgment and order dated 06.04.2013, passed in C.A.No.68 of 2011 by the learned Additional Sessions Judge, Krishnagiri, confirming the compensation amount of Rs.3,55,000/- and modifying the sentence, awarded by the Judicial Magistrate (Fast Track Court), Hosur in S.T.C.No.260 of 2011 dated 21.10.2011, from six months simple imprisonment to one month simple imprisonment.

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 the accused was his family friend and so, he gave him a hand loan of Rs.65,000/- on 30.05.2010 for his family needs; in discharge of the said liability, the accused gave a post dated cheque on 09.06.2010; at the request of the accused, the cheque was not presented on the due date, but was presented on 09.06.2010 and the same was returned on 10.06.2010 with the endorsement "funds insufficient" vide (Ex.P.3); the complainant issued a statutory demand notice (Ex.P.4) which was received by the accused vide postal acknowledgment card (Ex.P.6); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.260 of 2011 before the Judicial Magistrate (Fast Track Court), Hosur under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act") against the accused.

4. The complainant examined himself as P.W.1 and marked Exs.P.1 to P.6. The accused examined himself as D.W.1 and did not mark any document.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.10.2011 in S.T.C.No.260 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay compensation of Rs.65,000/- to the complainant, in default to undergo one month simple imprisonment.

6. The appeal in C.A.No.68 of 2011 filed thereagainst by the accused was partly allowed inasmuch as the conviction and compensation were confirmed, but the sentence of imprisonment was reduced from six months to one month simple imprisonment.

7. Challenging the concurrent findings of the two Courts below, the accused has preferred the present criminal revision under Section 397 read with 401 Cr.P.C.

8. Notice has not been served on the respondent / complainant.

9. Heard the learned counsel for the accused.

10. The learned counsel for the accused would submit that the accused has discharged the burden under Section 139 of the NI Act by examining himself as D.W.1, which was overlooked by the Courts below.

11. This Court gave its anxious consideration to the submission of the learned counsel for the accused.

12. 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 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."

13. 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."

14. 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."

15. Coming to the case at hand, the complainant, in his evidence, has stated about the loan that was taken by the accused and also about the issuance of the cheque and the dishonour. The complainant was extensively cross-examined by the accused on two days and the accused was not able to create any dent in the testimony of the complainant. In the cross examination, the complainant has stated that he knew the accused for 15 years and that he (accused) had borrowed Rs.65,000/- and subsequently, he (accused) had borrowed another sum of Rs.3,55,000/-. When he was asked as to how he raised the sum of Rs.3,55,000/-, he has stated that he obtained a loan from IDBI Bank and gave the money to the accused. He has further stated that the accused was having a bicycle show room. Ultimately it was suggested to the complainant that the accused used to take hand loans frequently from him for Rs.5,000/- to Rs.10,000/- and the cheque was given as security for those loans which the complainant has misused, which suggestion, the complainant has denied.

16. The accused has not denied the signature in the impugned cheque. The accused, in his evidence, had stated that he runs a bicycle show room and knows the complainant over seven years. He has further stated that he used to borrow small amounts frequently from the complainant and the cheque was given to the complainant as security. In the cross-examination, he has admitted that he received the statutory notice from the complainant and did not reply. He has also admitted that he did not prefer any police complaint against the complainant alleging misuse of the cheque given by him. Thus, it is clear from the evidence of the accused that he used to borrow frequently from the complainant. However, he was not able to say the amounts that was borrowed by him and as to when that was repaid.

17. Both the Courts have appreciated the evidence on record in the right perspective. 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], in this case even that has not been done. Therefore, this Court does not find any infirmity in the findings recorded by the two Courts below warranting interference.

In the result, this criminal revision stands dismissed as being devoid of merits and the judgment of conviction and compensation of the accused passed by the Appellate Court stands confirmed. 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 trial Court in connection with this case, the same shall be disbursed with accrued interest, if any, to the complainant or to his legal heirs, as the case may be. Registry is directed to send back the original records to the Courts concerned immediately.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge,
Krishnagiri.
2. The Judicial Magistrate,
Fast Track Court, Hosur.

Copy to : The Deputy Registrar (Criminal Section),
High Court, Madras.

AKM/02.12.19/6P-4C /
AKM/17.12.19

Order in

CrI. R.C. No. 838 of 2013