

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2019

DELIVERED ON : 05.11.2019

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.891 of 2013
and M.P.No.1 of 2013

P.Appukutty

... Revision Petitioner

Vs.

1.R.Jaganathan

2.The State of Tamilnadu,

Represented by the Public Prosecutor,
Erode District.

... Respondents

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to set aside the judgment dated 22.08.2012 passed in C.A.No.32 of 2012 by the learned II Additional District and Sessions Judge, Erode, confirming the judgment of conviction and sentence passed in S.T.C.No.425 of 2010 dated 04.01.2012 by the learned Judicial Magistrate No.I, Erode, and acquit the petitioner.

For Petitioner : Mr.V.S.Kesavan

For Respondent : Mr.M.Guruprasad [for R1]

Mr.G.Ramar

Government Advocate [for R2]

ORDER

This Criminal Revision has been filed to set aside the judgment and order dated 22.08.2012, passed by the learned II Additional District and Sessions Judge, Erode, in C.A.No.32 of 2012, confirming the judgment of conviction and sentence dated 04.01.2012 passed by the learned Judicial Magistrate No.I, Erode, in S.T.C.No.425 of 2010, and to acquit the petitioner.

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 04.04.2010, the accused borrowed a sum of Rs.4,00,000/- from the complainant and towards discharge of the said debt, issued a cheque dated

03.05.2010 for the said amount drawn on ICICI Bank (Ex.P.1). The complainant presented the cheque and the same was returned with the endorsement "Insufficient Funds" on 05.05.2010 vide Return memo (Ex.P.2). The complainant issued a statutory demand notice dated 06.05.2010 (Ex.P.3), which was received by the accused on 07.05.2010 vide Acknowledgement Card (Ex.P.5). The accused issued a reply notice dated 19.05.2010 (Ex.R.1) repudiating the debt. Since the accused did not comply with the demand, the complainant initiated the prosecution in S.T.C.No.425 of 2010 before the Judicial Magistrate I, Erode, under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

4. To prove his case, the complainant examined himself as P.W.1 and marked as Exs.P.1 to P.5.

5. On the side of the accused, the reply notice dated 19.05.2010 was marked as Ex.R.1. in the cross-examination of P.W.1. When the accused was examined under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. He did not give any plausible explanation as to how the impugned cheque had gone into the hands of the complainant.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.01.2012 in S.T.C.No.425 of 2010, convicted the appellant under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.32 of 2012 filed by the accused was dismissed by the II Additional District and Sessions Court, Erode on 22.08.2012.

8. Challenging the concurrent findings of the two Courts below, the accused has filed the present Criminal Revision under Section 397 r/w. 401 Cr.P.C.

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

10. The learned counsel for the accused submitted that the accused has sent a reply notice (Ex.R.1) setting out his defence which was not considered by the two Courts below in the proper perspective. He further contended that the blank cheque was given as security, which the complainant had filled without the authority of the accused.

11. Per contra, the learned counsel for the complainant refuted the contention.

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.

15. 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 who examined himself as P.W.1, has stated about the loan of Rs.4,00,000/- taken by the accused on 04.04.2010, the issuance of the impugned cheque dated 03.05.2010, the dis-honour of the cheque for insufficient funds, the issuance of the demand notice dated 06.05.2010 and the failure of the accused to comply with the demand. In the cross-examination of P.W.1, he has admitted that the accused had sent a reply notice dated 19.05.2010 and the same was marked as Ex.R.1. In the reply notice (Ex.R.1), the accused has taken a stand that he borrowed a sum of Rs.30,000/- from the complainant through one Saroja and at that time, he had given a blank but signed cheque to Saroja; he had discharged the debt in 2009, but the cheque was not returned to him and it has been misused by the complainant to initiate the present prosecution. Except making such an averment in the reply notice (Ex.R.1), the accused has not produced any material to substantiate this stand. He has not examined the said Saroja. He has accepted the signature in the impugned cheque, but it is his case that it was a blank cheque that was filled by the complainant. Very recently, in *Uttam Ram Vs. Devinder Singh Hudan & Another* (Crl.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 . . . "

16. In *Bir Singh (supra)*, the Supreme Court has held in paragraph no.39 as follows:-

"39. In our considered opinion, the High Court patently erred in holding that the burden was on the appellant complainant to prove that he had advanced the loan and the blank signed cheque was given to him in repayment of the same. The finding of the High Court that the case of the appellant complainant became highly doubtful or not beyond reasonable doubt is patently erroneous for the reasons discussed above."

17. 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, in this case even that has not been done.

18. Therefore, this Court does not find any infirmity in the findings arrived at by the two Courts below warranting interference.

In the result, this criminal revision 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. It is always open to the accused to have the offence compounded under Section 147 of the NI Act by approaching this Court even after he is taken into custody. The Registry is directed to send back the original records to the Courts concerned immediately. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge,
Erode.
2. The Judicial Magistrate No.I,
Erode.
3. The Chief Judicial Magistrate,
Erode.

Copy To: 1. The Deputy Registrar (Criminal Section),
High Court of Madras, Chennai -104.
2. The Section Officer, Criminal Section,
Madras, Chennai -104.

+1 cc to M/s.V.S.Kesavan, Advocate Sr.No. 89504
+1 cc to M/s.M.Guruprasad, Advocate SR.No.92090

AKM/06.12.19/7P- 8C /

Order in
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and MP.No.1 of 2013



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