

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2019

PRONOUNCED ON : 23.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1563 of 2016

S.Revathi W/O Mr.Srinivasan
... Petitioner/Appellant/Accused

Vs

N.Lavakumar S/o.C.V.Narasimalu
... Respondent/Defendant/Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the conviction and sentence passed by the Metropolitan Magistrate (FTC-I), Chennai in C.C.No.739 of 2009 dated 19.12.2014 and confirmed by the judgment and decree of the XV Additional Sessions Judge, Chennai in C.A.No.3 of 2015 dated 05.11.2016.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.J.Franklin

For Respondent : Mr.C.V.Kumar

O R D E R

This Criminal Revision has been preferred challenging the judgment dated 05.11.2016 passed by the XV Additional Sessions Judge, Chennai in C.A.No.3 of 2015 confirming the conviction and sentence dated 19.12.2014 passed by the Metropolitan Magistrate, Fast Track Court-I, Chennai in C.C.No.739 of 2009.

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

3.It is the case of the complainant that, he knows the accused and her husband from his childhood days, since both of them hail from his native village Sholingur; he was running a transport business in Aminjikarai area, wherein, the accused and her husband were also running a business in the name and style

of M/s.N.V.Designs; the accused urgently needed a hand loan of Rs.5 lakhs for her business purpose and when she approached him, he gave her the amount on 25.01.2006; at the time of taking the money, the accused represented that she would return it within six months; when he started demanding the return of the amount, the accused started evading and therefore, mediation talks were held in the presence of elders of both families and in the mediation talks, the accused came forward to repay the amount, pursuant to which, she issued the impugned cheque (Ex.P1) dated 24.01.2008 for Rs.5 lakhs drawn on Bank of Baroda, Choolaimedu, Chennai; he presented the cheque for collection at his bank viz. Syndicate Bank, Aminjikarai on 28.01.2008, but, the cheque returned unpaid with the endorsement "insufficient funds" vide return memo dated 28.01.2008 (Ex.P2); the complainant issued a statutory demand notice dated 02.02.2008 (Ex.P3), which was received by the accused, as could be seen from the proof of delivery (Ex.P4); since the accused did not reply, he initiated a prosecution in C.C.No.739 of 2009 before the Metropolitan Magistrate, Fast Track Court-I, Egmore under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

4.On appearance, the accused was questioned under Section 251 Cr.P.C. and she denied the accusation.

5.To prove the case, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P4. On the side of the accused, no witness was examined nor was any document marked.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against her, she merely denied the same and did not give any explanation.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.12.2014 in C.C.No.739 of 2009, convicted the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced her to undergo 1 year simple imprisonment and cheque amount of Rs.5 lakhs was directed to be paid to the complainant as compensation. The C.A.No.3 of 2015, that was filed by the accused in the Court of Session, has been dismissed by the XV Additional Sessions Judge, Chennai on 05.11.2016. Challenging the orders passed by the two courts below, the accused is before this Court under Section 397 read with 401 Cr.P.C.

8.Heard Mr.N.R.Elango, learned Senior Counsel appearing for the accused and Mr.C.V.Kumar, learned counsel appearing for the complainant.

9. Before adverting 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 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."

10. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the Supreme Court formulated the following question of law :

"(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 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."

11. Mr. N.R. Elango took this Court through the evidence of the complainant (PW1) and formulated his submissions. In the proof affidavit filed by the complainant, he has reiterated the complaint averments. In the cross-examination, the complainant has stated that, he is into lorry business; he gave Rs.5 lakhs in cash to the accused. When he was specifically asked how he raised the money, he has stated that he pledged his wife's jewels to raise the money. He further stated that he is not an income tax assessee. When questioned about the number of lorries, he has stated that he has two lorries and their numbers are TN02 AT 8943 and TN09 A 5454. He has further stated that his monthly income was Rs.40,000/-. When questioned as to how he knew the accused, he has stated that he is from Ayyavoo colony and the accused hails from Natrajapuram, which is next to Ayyavoo colony. When he was questioned as to whether he would go frequently to the house of the accused, he has stated that he would not go to the house of the accused frequently but, as and when he passes through their house, he would stop to talk to them. It was ultimately suggested to him that the husband of

the accused had joined a chit for Rs.1 lakh run by him and as security, he had collected the impugned cheque and has misused it, which suggestion the complainant denied.

12.Mr.N.R.Elango placed strong reliance on the judgments of the Hon'ble Supreme Court in Krishna Janardhan Bhat Vs. Dattatraya G.Hegde [(2008) 4 SCC 54, Basalingappa Vs. Mudibasappa [(2019) 5 SCC 418] and submitted that the complainant had failed to prove that he had the means to give the loan of Rs.5 lakhs and that, the complainant had failed to prove the debt by marking his account books and income tax statement.

13.Per contra, Mr.C.V.Kumar, learned counsel appearing for the accused refuted the contentions.

14.As stated by the Supreme Court, while exercising revisional jurisdiction, this Court cannot reappreciate the evidence like a Court of appeal, unless, it is shown that the findings on facts arrived at by the two Courts below are on the face on it perverse. In this case, the accused had not chosen to reply to the statutory notice (Ex.P3). She has not denied the receipt of the statutory notice (Ex.P3) either. The accused has not denied her signature in the impugned cheque (Ex.P1). Even in her Section 313 Cr.P.C. statement, she has not stated as to how, the cheque signed by her has gone into the hands of the complainant. On the contrary, the complainant has explained it, by saying that mediation talks were held in the presence of elders of both families, pursuant to which, the accused gave the impugned cheque two years after she had taken the loan from him.

15.Mr.N.R.Elango contended that the complainant should have adduced the evidence to show that he had pledged his wife's jewels for raising the money to give it to the accused. He further contended that if the complainant had raised the amount by pledging his wife's jewels., he would have charged interest for it from the accused.

16.This Court is unable to subscribe to the aforesaid argument because, the complainant has clearly stated that the accused and her husband were known to him from her childhood days, as all of them hailed from Sholingur village and had settled in Chennai, where the accused and her husband were having their business near his house. The accused did not deny these facts. Thus, it is the case of the complainant that the loan was given because of her proximity, with the family of the accused. That is why, perhaps, he would not have charged interest. It is true that the burden of establishing the guilt is on the prosecution but, that theory cannot be carried so far as to hold that the prosecution must lead evidence to rebut all

possible defences (see *Bharat Singh Vs. State of U.P.* [(1973) 3 SCC 896]).

17. It was suggested to the complainant that he is running a chit business, which suggestion, he denied and stated that, he is into lorry business and has also given the registration number of the two lorries he has. He has also stated that he was earning Rs.40,000/- per month at the relevant time.

18. In *Basalingappa (supra)*, the accused was acquitted by the trial Court which was reversed by the High Court. In that case, the accused, in support of his defence, filed Ex.D1 to Ex.D3 in order to show that the complainant did not have the means to give the loan. In these circumstances, the Supreme Court held that the accused has discharged the burden under Section 139 of the Negotiable Instruments Act, 1881 and restored the order of acquittal passed by the trial Court. It is true that in *Basalingappa (supra)*, the Supreme Court has stated that, "inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely." In this case, except making mere suggestions, the accused has not placed any material worth its salt to dislodge the presumption under Section 139 of the Negotiable Instruments Act, 1881.

19. In *Bir Singh (supra)*, the Supreme Court in paragraph No.33, considered *Krishna Janardhan Bhat (supra)* and has held as follows :

"However, keeping in view the peculiar facts and circumstances of the case, this Court was of the opinion that the courts below had approached the case from a wholly different angle by wrong application of legal principles."

20. It is trite that in criminal law, precedents are not to be treated as Euclid's theorem (See *Charan Singh and Others Vs State of Punjab* [(1975) 3 SCC 39] and *Bir Singh (supra)*). In such view of the matter, this Court does not find any infirmity in the finding of facts by the two courts below warranting interference.

In the result, this Criminal Revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused for undergoing the sentence. Registry is directed to send the original records to the appellate Court and the trial Court forthwith.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate FTC-1,
Egmore.
- 2.The Chief Judicial Magistrate,
Chennai.
- 3.The Metropolitan Magistrate (FTC-I),
Chennai.
- 4.The Chief Metropolitan Magistrate,
Chennai.
- 5.The XV Additional Sessions Judge,
Chennai.

Copy to

The Section Officer,
Criminal Section,
High Court, Chennai.

+1cc to Mr.C.V.Kumar, Advocate Sr.63559
+1cc to Mr.J.Franklin, Advocate Sr.63409

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