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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.06.2019

PRONOUNCED ON: 02.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.74 of 2019

A.Rajalingam,
S/o.Ayyavoo,
Tamil Nadu State Government
Transport Corporation,
Salem Division-II,
Pallipalayam Branch,
Erode-7.

.. Petitioner/Accused

Vs.

T.Viswanathan,
S/o.Thangamuthu Gounder,
No.32, Mariamman Koil near,
Kanagapuram Post,
Vellore,
Erode District.

.. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 09.03.2015 passed in C.A.No.23 of 2014 on the file of the II Additional District and Sessions Court, Erode, confirming the conviction and sentence of one year Rigorous imprisonment together with fine amount of Rs.5,000/- failing which one month simple imprisonment for the alleged offence under section 138 of negotiable Instruments Act the judgment dated 23.01.2014 passed in S.T.C.No.117 of 2012 on the file of the Judicial Magistrate (Fast Track Court-II), Erode.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.C.S.Saravanan

ORDER

This criminal revision has been preferred seeking to set aside the order dated 09.03.2015 passed in C.A.No.23 of 2014 on the file of the II Additional District and Sessions Court,



Erode, confirming the judgment dated 23.01.2014 passed in S.T.C.No.117 of 2012 on the file of the Judicial Magistrate (Fast Track Court-II), Erode.

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 well; on 30.11.2008, the accused borrowed a sum of Rs.65,000/- promising to repay the said sum on 03.02.2009; after paying one month interest of Rs.1,300/- in advance, the accused issued a cheque dated 03.02.2009 for Rs.65,000/- drawn on Centurion Bank, Erode; the complainant presented the cheque for collection and the same was returned on 04.02.2019 with the endorsement "Account closed"; the complainant issued a statutory notice dated 04.03.2009 to the accused and the same was not claimed by the accused despite intimation from the post office and hence, it was sent back to the complainant; therefore, the complainant initiated a prosecution before the Judicial Magistrate II, Erode, against the accused. Thereafter, the case was transferred to the file of the Fast Track Court and was re-numbered as S.T.C.No.117 of 2012.

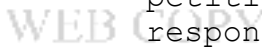
4. On the appearance of the accused, the provisions under Section 251 Cr.P.C. were complied with.

5. The complainant examined himself as PW1 and marked five exhibits.

6. When the accused was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the accusations. On behalf of the accused, K.Thiyagaraj, Time Keeper of the Tamil Nadu State Transport Corporation, Erode Branch, was examined as DW1 and Exs-D1 to D3 were marked.

7. After considering the evidence on record and hearing both sides, the Trial court, by judgment dated 23.01.2014 in S.T.C.No.117 of 2012, convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one month.

8. Challenging the conviction and sentence, the accused filed an appeal in C.A.No.23 of 2014 before the Court of Session, which was heard by the II Additional District Judge, Erode, who, by judgment dated 09.03.2005, confirmed the conviction and sentence imposed by the Trial Court, aggrieved by



9. Heard Mr.C.Prakasam, learned counsel for the petitioner/accused and Mr.C.S.Saravanan, learned counsel for the respondent/complainant.

11. This Court carefully perused the evidence of T.Viswanathan (PW1) and K.Thiyagarajan (DW1). It is seen that the accused has not denied his signature in the cheque but has taken a defence that a blank but signed cheque was given as security in the year 2006, which, the complainant has misused in the year 2009. The complainant has denied this suggestion. In the statement under Section 313 Cr.P.C., the accused has not stated that he was on duty between Erode and Mysore from 29.11.2008 to 30.11.2008. However, both the Courts have believed the evidence of T.Viswanathan (PW1) and disbelieved the evidence of K.Thiyagarajan (DW1).

13. K.Thiyagarajan (DW1) was examined for the first time on 05.07.2012. In the chief examination, he has stated that the accused was working as Conductor and his badge number is 05283; the accused was on duty from 3.00 p.m. on 29.11.2008 to 3.00 p.m. On 30.11.2008, in support of which, he marked a true copy of muster roll (Ex-D1). In the cross-examination, he admitted that on 30.11.2008, the accused was in the first shift, which got over at 12.00 p.m. He did not mark the trip sheets to the



bus. In the cross-examination, he further admitted that the trip sheets maintained by the accused will be available in his office, however, the trip sheet was not marked on 05.07.2012. The accused filed an application under Section 311 Cr.P.C. to recall K.Thiyagarajan (DW1) and he was once again examined-in-chief on 23.10.2013, a year and a half later, by the accused. In the chief examination, through this witness, true copy of trip sheet (Ex-D2) and true copy of the collection payment receipt (Ex-D3) were marked.

14. This Court perused Exs-D1 to D3. As rightly pointed out by the Trial Court and the first Appellate Court, in the cross-examination of K.Thiyagarajan (DW1) on 05.07.2012, he admitted that the accused was on the first shift on 30.11.2008 which got over at 12.00 noon. In Exs-D1 to D3, there are absolutely no particulars about the shift timings and also the presence of the accused on duty. The Trial Court has given the following finding:

"...Initially DW1 has stated that the accused has worked in I-Shift on 30.11.2008 and marked Ex.D1 which shows that the accused was allotted I-shift on 30.11.2008. DW1 also stated that the I-shift completes at 12.00 p.m. but later DW1 himself states that the accused was on duty in the bus bearing number TN 33 N 2191 on 29.11.2008 at 6.25 p.m. to 30.11.2008 at 3.00 p.m. which was direct contradiction to his own statement. The documents produced by defence didn't reflect the time of the bus in which the accused was worked as conductor. PW1 has stated that accused has borrowed money on 30.11.2008 and during cross-examination he has stated that the accused has borrowed the amount at about 12.30 p.m., the material evidence produced by the defence has failed to substantiate that on 30.11.2008 at about 12.30 p.m. where the accused was and what he was doing, creates doubt about the presence of accused in duty and thereby the defence of alibi fails."

15. The above reasoning of the Trial Court, as affirmed by the Appellate Court, does not suffer from any infirmity or illegality warranting interference by this Court in exercise of its revisional jurisdiction.

16. 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 Kuldip Singh Anand and Others*, etc.²:

"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

2 (2004) 7 SCC 659



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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."

17. On a careful analysis of the evidence on record, this Court does not find any illegality or impropriety in the orders of conviction passed by the Courts below, warranting interference. However, since the petitioner is a bus conductor, he may lose his employment, if he undergoes imprisonment. Hence, this Court is of the view that the interests of justice will be sub served, if the sentence of imprisonment is converted to fine, so as to cover the debt and the other expenses incurred by the complainant, since 2009.

In the result, this revision petition is partly allowed. The conviction of the accused under Section 138 of the NI Act is confirmed. The sentence of imprisonment imposed by the Trial court and the appellate court is set aside. The accused is sentence to pay a fine of Rs.1,30,000/- (being twice the cheque amount) within four weeks from the date of receipt of a copy of this order, in default to undergo simple imprisonment for six months. The fine amount shall be deposited before the Trial Court and on such deposit, the same shall be disbursed as compensation to the complainant or his legal heirs as the case may be.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

nsd

NB: Registry is directed to return the records to the Courts concerned.

To

1. The II Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate, (Fast Track Court-II), Erode.



3. The Deputy Registrar,
Madras High Court,
Chennai.

4. The Section Officer,
Criminal Section,
High Court of Madras.

+1cc to Mr.C.S.Saravanan, Advocate, S.R.No.55131

Crl.R.C.No.74 of 2016

SPD(CO)
CS/07/08/2019