

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2019

PRONOUNCED ON :23.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.9 of 2016

V.Manjunath Reddy Petitioner/Accused

Vs

P.Ramesh Respondent/Complainant

Criminal Revision case preferred under Section 397 read with 401 Cr.P.C. to set aside the order of conviction passed in S.T.C.No.283 of 2013 on the file of the Judicial Magistrate-cum-Fast Track Court, Hosur dated 03.06.2014 confirmed in Crl.A.No.29 of 2014 on the file of the Additional District and Sessions Judge, Hosur dated 10.10.2015.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.P.Subba Reddy

O R D E R

This Criminal Revision has been preferred challenging the judgment dated 10.10.2015 passed by the Additional District and Sessions Judge, Hosur in C.A.No.29 of 2014 confirming the conviction and sentence dated 03.06.2014 passed by the Judicial Magistrate, Fast Track Court, Hosur in S.T.C.No.283 of 2013.

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

3.It is the case of the complainant that, the accused is well known to him and that, the accused wanted Rs.8 lakhs urgently to meet certain expenses for the house that the accused was constructing in Shanti Nagar at Hosur and therefore, he gave him the amount on 10.01.2013; the accused promised to return the amount in five months; even after five months, when the accused did not come forward to return the amount, he started testing him and therefore, the accused issued the impugned cheque

(Ex.P1) dated 29.06.2013, for Rs.8 lakhs drawn on ICICI bank, Hosur branch; he presented the cheque for collection through his bank viz. Central Bank of India, Hosur branch on 29.06.2013; but the said cheque returned unpaid on 04.07.2013, with the endorsement "account closed" vide Ex.P3; he issued a statutory demand notice dated 27.07.2013 (Ex.P4), which was received by the accused and the accused sent a reply notice dated 13.08.2013 (Ex.P7) denying the liability, but not given any explanation as to how, the cheque drawn by him went into the hands of the complainant; therefore, he initiated a prosecution in S.T.C.No.283 of 2013 before the Judicial Magistrate, Fast Track Court, Hosur 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 he denied the accusation.

5.To prove the case, the complainant examined himself as PW1 and one Mahesh, Branch Manager of ICICI Bank, Hosur was examined as PW2. On behalf of the complainant, Ex.P1 to Ex.P8 were marked.

6.When the accused was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same but, did not offer any explanation, as to how the impugned cheque came into the hands of the complainant.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 03.06.2014 in S.T.C.No.283 of 2013, convicted the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo 6 months simple imprisonment and pay compensation of Rs.8 lakhs, being the cheque amount to the complainant. The appeal in C.A.No.29 of 2014 preferred by the accused, has been dismissed by the Additional District and Sessions Judge, Hosur on 10.10.2015. Challenging the orders passed by the two Courts below, the accused is before this Court.

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

9.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. [(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. Learned counsel for the accused submitted that even at the earliest point of time, the accused had denied the liability and also the execution of the cheque and even in the statement under Section 313 Cr.P.C., he had maintained the same stand. He further contended that the complainant had failed to prove that he had the means to give the loan. He also took this Court through the cross-examination of the complainant, wherein the complainant has stated that he will not go to the house of the accused frequently.

12. Per contra, learned counsel for the complainant refuted the contentions.

13. This Court gave its anxious consideration to the rival submissions. It is true that the accused has denied the liability and also the execution of the cheque, but, the accused has not given any explanation either in the reply to the statutory notice (Ex.P7) or in his statement under Section 313 Cr.P.C., as to the circumstances under which, the impugned cheque belonging to him had gone into the hands of the complainant. In *Rangappa Vs Sri Mohan* [2010 (4) CTC 118], the Supreme Court has held that the accused can discharge the burden under Section 139 of the Negotiable Instruments Act, 1881, by preponderance of probabilities.

14. In the cross-examination, the complainant has stated that, he is an LIC agent, he owns lands and gets rents from properties. He has further stated that, he knows the accused for the last 10 years and that, his father and the father of the accused were working as teachers. In the light of such evidence, a stray statement that he will not go to the house of the accused frequently, cannot lead to the inference that the complainant was a stranger to the accused. The complainant has further stated in the cross-examination that, he is an income tax assessee. The accused had not taken any steps to prove that the signature found in the impugned cheque was not his. Merely suggesting the same without anything more, will not lead to the inference that the accused has proved that he has not executed the impugned cheque.

15. It may be necessary to state here that the complainant has himself filed the reply notice dated 13.08.2013 along with the complaint and the same was marked as Ex.P7. Since the accused had taken a plea in the reply notice that he had not issued the impugned cheque, the complainant examined Mahesh (PW2), Manager of ICICI Bank, Hosur to prove that the impugned cheque was drawn on the account held by the accused. Mahesh (PW2) has stated that, the accused was the holder of the S.B.A/c.No. 015061010261 and the impugned cheque (Ex.P1) was issued from that account. He also marked the account statement of the accused as Ex.P8. In the cross-examination, he admitted that the accused had closed the account on 19.03.2005. The accused could have easily asked Mahesh (PW2) to produce the specimen signature card and could have requested the Court to send it along with the impugned cheque for Expert opinion. He did not do that. In the Section 313 Cr.P.C. questioning, he merely denied his signature in the cheque but, did not give any explanation, as to how the cheque leaf of his account that was closed by him in 2005, gone into the hands of the complainant for the complainant to fill it up, forge his signature and present it for clearance. In the absence of a scintilla of explanation, one can also draw the inference that the accused gave the cheque knowing full well that it will be returned unpaid as the account has been closed.

16. In such view of the matter, this Court does not find any impropriety or illegality in the finding of facts by two Courts below warranting interference.

In the result, this Criminal Revision stands dismissed. The trial Court is directed to secure the petitioner to undergo the remaining period of sentence, if any. Registry is directed to send the original records to the appellate Court and the trial Court forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Additional District and Sessions Judge,
Hosur.

2.The Judicial Magistrate,
Fast Track Court, Hosur.

3.The Section Officer(Records)
Criminal Section, High Court, Madras.

+1cc to Mr.R.Jayaprakash, Advocate Sr.63291

+1cc to Mr.P.Subbareddy, Advocate Sr.62829

Pre-Delivery Order in
CRL.R.C.No.9 of 2016

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