

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.720 of 2019
and Crl.M.P.Nos.10093, 10095 & 10097 of 2019

M.Bannari .. Petitioner/Accused

Vs.

M.Bharathi .. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 10.08.2015 passed in C.C.No.667 of 2013 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Coimbatore, confirmed by judgment and order dated 29.01.2018 passed in C.A.No.200 of 2015 on the file of the III Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.B.R.Sankaralingam

O R D E R

This petition has been filed seeking to set aside the judgment and order dated 10.08.2015 passed in C.C.No.667 of 2013 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Coimbatore, confirmed by judgment and order dated 29.01.2018 passed in C.A.No.200 of 2015 on the file of the III Additional District and Sessions Court, Coimbatore.

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

3. The long and short of the facts is as under:

3.1 It is the case of the complainant that on 15.12.2006, the accused borrowed a sum of Rs.50,000/- and executed a promissory note (Ex-P1) towards the liability. The accused gave a cheque dated 23.08.2007 (Ex-P2) for a sum of Rs.50,000/-, . When the complainant presented the cheque, it was dishonoured on the ground "Funds Insufficient" on 24.08.2007 vide return memo (Ex-P3). The complainant issued a statutory demand notice dated 31.08.2007 (Ex-P5), which the accused did not collect from the post office, though, intimation was given to him from 03.09.2007 to 07.09.2007. Therefore, the notice (Ex-P5) was returned to the complainant. The complainant initiated a prosecution in S.T.C.No.15 of 2008 before the Judicial Magistrate Court

(Fast Track Court No.I), Coimbatore and after the case was transferred to various Courts, pursuant to the judgment of the Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra¹, the case once again came back to the Court of Judicial Magistrate (Fast Track Court No.I), Coimbatore and was renumbered as C.C.No.667 of 2013.

3.2 The complainant examined himself as P1 and marked Exs-P1 to P6.

3.3 When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, no witness was examined nor any document marked.

3.4 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 10.08.2015, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") and sentenced him to undergo six months simple imprisonment and to pay a sum of Rs.50,000/- as compensation to the complainant, in default to undergo three months simple imprisonment.

3.5 Challenging the aforesaid conviction and sentence, the accused filed C.A.No.200 of 2015, which has been dismissed by the III Additional District and Sessions Judge, Coimbatore, on 29.01.2018.

3.6 Challenging the judgments and orders passed by the Courts below, the accused has filed the present revision petition under Section 397 r/w 401 Cr.P.C., with a delay of 372 days, to condone which, the accused filed Crl.M.P.No.6954 of 2019 in Crl.R.C.No.SR24974 of 2019. This Court, by order dated 01.07.2019, directed the accused to deposit a sum of Rs.50,000/- within two weeks from the date of receipt of a copy of that order, before the Trial Court.

4. Mr.B.R.Sankaralingam, learned counsel for the accused submitted that despite his instructions, the accused did not come forward to deposit the amount. However, this Court condoned the delay and took up the main case itself for disposal today.

5. The learned counsel for the accused further submitted that both the Courts below have failed to appreciate the cross-examination of the complainant in the right perspective. He further submitted that the statutory notice was not served on the accused and therefore, the very foundation of the prosecution stood demolished.

6. This Court gave its anxious consideration to the submissions made by the learned counsel for the accused.

7. Presumption of innocence is a human right which cannot be dislodged easily. The fact remains that the accused has been convicted by the Trial Court and the Appellate Court. A three Judge Bench of the Supreme Court, in *Girish Kumar Suneja Vs CBI*², has delineated the revisional jurisdiction as under:

"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 of the Cr.P.C."

8. 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 Kuldeep Singh Anand and Others*, etc.³:

"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 (emphasis supplied) 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.”

9. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in *Bir Singh Vs. Mukesh Kumar*⁴, wherein, the following question of law was formulated:

“(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction,

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interfere with an order of conviction in the absence of any jurisdictional error or error of law"

10. The answer of the Supreme Court to the aforesaid question of law 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. In this case, the complainant has filed the promissory note (Ex-P1) to prove the debt. The accused has issued the impugned cheque for Rs.50,000/-, which, he has not disputed. The complainant had issued the statutory notice dated 31.08.2007, which was returned with the endorsement that the accused did not collect it from the post office. Therefore, this Court does not find any perversity in the appreciation of the evidence by the Courts below warranting interference.

In the result, the criminal revision petition is dismissed as being devoid of merits. Connected Crl.M.Ps. are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Judicial Magistrate Court (Fast Track Court No.I), Coimbatore
- 2.The III Additional District and Sessions Court, Coimbatore.

+1cc to Mr.B.R.Sankaralingam , Advocate SR.No. 62928

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