

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.708 of 2019

C.Natarajan

.. Petitioner

Vs.

Muthusamy

... Respondent

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 22.04.2015 passed in C.C.No.221 of 2012 on the file of the Judicial Magistrate Court I, Salem, confirmed by judgment and order dated 19.02.2019 passed in C.A.No.41 of 2018 on the file of the III Additional District Court, Salem.

For Petitioner : Mr.J.Prithivi

O R D E R

This petition has been filed seeking to set aside the judgment and order dated 22.04.2015 passed in C.C.No.221 of 2012 on the file of the Judicial Magistrate Court I, Salem, confirmed by judgment and order dated 19.02.2019 passed in C.A.No.41 of 2018 on the file of the III Additional District Court, Salem.

2. The precis of the facts is as under:

The petitioner initiated a prosecution in C.C.No.221 of 2012 under Section 138 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate Court I, Salem, against the respondent herein, in which, the respondent was acquitted on 22.04.2015. Challenging the acquittal, the petitioner filed C.A.No.41 of 2018, which has also been dismissed by the III Additional District Court, Salem, on 19.02.2019. Challenging the judgments and orders passed by the Courts below, the petitioner has preferred the present revision petition under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.J.Prithivi, learned counsel for the petitioner, who, submitted that both the Courts have failed to take note of the fact that the respondent had not discharged the burden under Section 139, *ibid*. She further submitted that both the Courts below have mis-appreciated the evidence adduced by the petitioner.

4. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner.

5. The fact remains that the respondent has been acquitted by the Trial Court and the Appellate Court. This Court cannot convert the finding of acquittal to one of conviction under Section 401(3) Cr.P.C. At this juncture, it is apropos to point out that a three Judge Bench of the Supreme Court, in *Girish Kumar Suneja Vs CBI*¹, 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."

6. That apart, in a revision against acquittal, this Court cannot reverse the acquittal and convict the accused. At the most, this Court can only order re-trial. 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 (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.”

7. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in *Bir Singh Vs. Mukesh Kumar*³, 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"

8. 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."

9. Presumption of innocence is a human right which cannot be dislodged easily. In a revision against acquittal, this Court would loath to re-appreciate the evidence.

In the result, this revision petition is dismissed as being devoid of merits.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

nsd
To

1. The Judicial Magistrate I,
Salem.

2. The III Additional District Judge,
Salem.

+1cc to Mr.A.K.Kumarasamy , Advocate SR.No. 62603

Cr1.R.C.No.708 of 2019

A.SK(28/08/2019)