

Bail Slip

The Appellant/Accused, namely Ramalingam aged 50 years S/o.Raja Gopalan was directed to be released on bail as per order dated 11.03.2014 made in CRL MP.NO.1/14 IN CRL RC.NO.303/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.09.2019

Delivered on : 12.09.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.303 of 2014

Ramalingam ... Revision Petitioner
Appellant/Accused

Vs.

Kalaiselvi ... Respondent/ Respondent
Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment in C.A.No.16 of 2013 dated 18.02.2014, passed by the III Additional District and Sessions Judge, Cuddalore at Vridhachalam, confirming the judgment dated 11.06.2013, passed by the Judicial Magistrate No.II, Vridhachalam, in C.C.No.46 of 2007.

For Petitioner : Mr.S.Kumara Devan

For Respondent : Mr.V.Anand

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 18.02.2014, passed by the III Additional District and Sessions Judge, Cuddalore at Vridhachalam, in C.A.No.16 of 2013, confirming the judgment dated 11.06.2013, passed by the Judicial Magistrate No.II, Vridhachalam, in C.C.No.46 of 2007.

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

3.It is the case of the complainant that the accused borrowed Rs.1,00,000/- (Rupees one lakh only) on 18.08.2006 for his business and towards the said debt, he gave a cheque (Ex.P1) dated 21.08.2006, which, when presented by the complainant, was returned on the ground of insufficiency of funds with Bank memo dated 23.11.2006 (Ex.P2). The complainant issued a statutory demand notice dated 08.12.2006, which was returned unserved and the same was marked as Ex.P4. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.46 of 2007 before the Judicial Magistrate Court No.II, Vridhachalam, for the offence under Section 138 of the Negotiable Instruments Act, against the accused. The complainant examined herself as P.W.1. One Karuppan Chetty, Manager of Indian Overseas Bank, Mangalampettai Branch (complainant's Bank) was examined as P.W.2 and one Baskaran, Manager of Tamil Nadu Mercantile Bank, Villupuram Branch (accused's Bank) was examined as P.W.3. Exhibits P1 to P5 were marked on the side of the complainant. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the accused, nor any document was marked. After hearing either side and considering the evidence on record, the trial Court, by judgment and order dated 11.06.2013 in C.C.No.46 of 2007, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.

4.The appeal in C.A.No.16 of 2013, filed by the accused, challenging the conviction and sentence, was dismissed by the III Additional District and Sessions Judge, Cuddalore at Vridhachalam, on 18.02.2014.

5.Challenging the concurrent findings of the two Courts below, the accused has preferred the present Criminal Revision Case under Section 397 r/w. 401 Cr.P.C. At the time of admission, this Court, by order dated 11.03.2014 in M.P.No.1 of 2014 in CrI.R.C.No.303 of 2014, granted suspension of sentence and bail on condition that the accused shall deposit Rs.25,000/- to the credit of C.C.No.46 of 2007 before the trial Court.

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

7.Before advertting to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017)

14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder :

"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 Cr.P.C."

8. 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."

9. 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 to the aforesaid question 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."

10.Learned counsel for the accused contended that the complainant has admitted in the cross-examination that, she presented the impugned cheque once and after it was dishonoured, she presented it for the second time and therefore, the prosecution on such second presentation is not valid.

11.This issue has been answered by the Supreme Court in MSR Leathers v. S.Palaniappan [(2013) 1 SCC 177], wherein, the Supreme Court has overruled the earlier decision in Sadanandan Bhadran v. Madhavan Sunil Kumar [(1998) 6 SCC 514] and has held that a complaint based on second or successive dishonour of a cheque is also permissible. In fact, P.W.1, in her cross-examination has stated that she presented the cheque again, only at the instance of the accused, who told her that the cheque will stand cleared, if she re-presents it.

12.The learned counsel for the accused placed reliance on a notice (Ex.D1), that is said to have been given by the complainant to one Prabu and contended that the impugned cheque in this case related to a transaction with Prabu and not with the accused herein.

13.This Court called for the original records from the trial Court and found that Ex.D1 is a demand notice, that has been sent by the complainant herein to one Prabu in respect of a pro-note and not in respect of any bounced cheque. Thus, Exs.D1 and D2 have no relevance to the case at hand. The accused has not denied his signature in the impugned cheque, nor has he given any explanation as to

how the cheque issued by him came into the hands of the complainant. The accused has not discharged the burden under Section 139 of the Negotiable Instruments Act even by preponderance of probability. On a careful scrutiny of the evidence on record, this Court does not find any infirmity in the finding on facts arrived at by the two Courts below warranting interference.

In the result, this Criminal Revision Case is dismissed and the judgment passed by the two Courts below are confirmed. The trial Court is directed to secure the accused to undergo the sentence. The complainant is entitled to withdraw Rs.25,000/- (Rupees twenty five thousand only), if it has been deposited by the accused in compliance with the order made by this Court on 11.03.2014 in M.P.No.1 of 2014 in CrI.R.C.No.303 of 2014. Registry is directed to send back the original records to the respective Courts below.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

mkn

- 1.The III Additional District and Sessions Judge, Cuddalore at Vridhachalam.
- 2.The Judicial Magistrate No.II, Vridhachalam.
- 3.The Chief Judicial Magistrate, Cuddalore
4. The Section Officer, ER Section, High Court, Madras
5. The Public Prosecutor, High Court, Madras - 104.

Copy to :

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.s.Kumara Devan , Advocate SR.No. 78228

+1cc to Mr.V.Anand , Advocate SR.No. 79005

CrI. R.C. No.303 of 2014

A.SK(06/11/2019)