

Bail Slip

The Petitioner/Accused was directed to be released on bail by the order of this Court dated 14.03.2014 in MP.No.1 of 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.309 of 2014

Murugesan

..Revision Petitioner/Appellant/Accused

Vs.

Manimaran

..Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to set aside the judgment dated 19.12.2013, passed by the Principal Sessions Judge, Namakkal, in C.A.No.41 of 2013, confirming the judgment dated 30.07.2013, passed by the Judicial Magistrate No.I, Namakkal, in C.C.No.200 of 2012.

For Petitioner : Mr.W.Camyles Gandhi

For Respondent : Mr.D.Shivakumaran

ORDER

This Criminal Revision Case has been filed to set aside the judgment dated 19.12.2013, passed by the Principal Sessions Judge, Namakkal, in C.A.No.41 of 2013, confirming the judgment dated 30.07.2013, passed by the Judicial Magistrate No.I, Namakkal, in C.C.No.200 of 2012.

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.9,00,000/- (Rupees nine lakhs only) on 06.02.2011 and agreed to return the amount with interest @ 18% p.a. and executed a pro-note (Ex.P1) for that. When the complainant demanded repayment, the accused issued a cheque dated 06.07.2012

(Ex.P2) for Rs.9,00,000/- (Rupees nine lakhs only). When the complainant presented the cheque, the same was dishonoured with the endorsement "funds insufficient" vide Bank Memo dated 09.07.2012 (Ex.P4). The complainant issued a statutory demand notice on 13.07.2012 (Ex.P5), which was received by the accused on 17.07.2012, vide Acknowledgment Card (Ex.P6). Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.200 of 2012 before the Judicial Magistrate Court No.I, Namakkal, for the offence under Section 138 of the 'Negotiable Instruments Act' ('N.I. Act' for brevity), against the accused. The complainant examined himself as P.W.1 and marked Exhibits P1 to P6. 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 the side 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 30.07.2013 in C.C.No.200 of 2012, convicted the accused of the offence under Section 138 of the N.I. Act and sentenced him to undergo six months simple imprisonment and to pay Rs.9,00,000/- as compensation to the complainant, in default, to undergo one month simple imprisonment.

4.The appeal in C.A.No.41 of 2013, filed by the accused, challenging the conviction and sentence, was dismissed by the Principal Sessions Judge, Namakkal, on 19.12.2013.

5.Challenging the concurrent findings of the two Courts below, the accused has filed the present Criminal Revision Case under Section 397 r/w. 401 Cr.P.C. At the time of admission, this Court, by order dated 14.03.2014 in M.P.No.1 of 2014 in CrI.R.C.No.309 of 2014, granted suspension of sentence and bail on condition that the accused should deposit 25% of the compensation amount to the credit of C.C.No.200 of 2012 before the trial Court.

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

7.Before advertng 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 not filed his Income Tax Returns and therefore, the debt has not been proved.

11.The fact remains that the pro-note has been marked as Ex.P1 and the accused has not denied the execution of the impugned cheque (Ex.P2). In such circumstances, the non filing of Income Tax Returns of the complainant has no significance. Once the accused has admitted the issuance of the cheque in question, the presumption under Section 139 of the N.I. Act comes into play and the burden is on the accused to dislodge the presumption. The presumption can be dislodged by the accused, even by preponderance of probability. Unfortunately, in this case, the accused has not given any explanation as to the circumstances, under which, he had executed the pro-note and issued the impugned cheque, even while he was questioned by the trial Court under Section 313 Cr.P.C.

12.The learned counsel for the accused contended that the accused had filed insolvency proceedings and therefore, his prosecution under Section 138 of the N.I. Act was illegal.

13.In the opinion of this Court, insolvency proceedings against the accused is not an immunity against prosecution under Section 138 of the N.I. Act. In fact, in the insolvency proceedings, the complainant has been shown as one of the Creditors. In fine, this Court does not find any infirmity in the finding of facts arrived at by the two Courts below, warranting interference.

In the result, this Criminal Revision Case stands dismissed and the judgments passed by the two Courts below are confirmed. The trial Court is directed to secure the accused to undergo the sentence. Any amount deposited by the accused in compliance with the order dated 14.03.2014, made by this Court in M.P.No.1 of 2014 in CrI.R.C.No.309 of 2014, shall be disbursed to the complainant.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate No.I,
Namakkal.

3.-Do-Thro' The Chief Judicial Magistrate,
Namakkal.

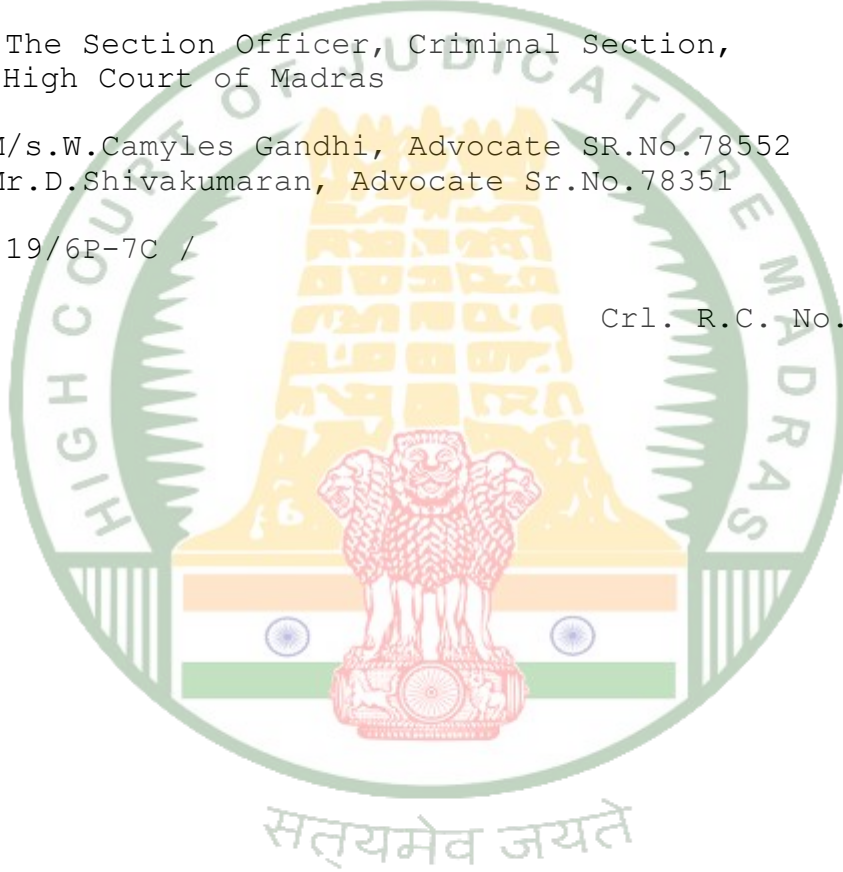
Copy To: The Section Officer, Criminal Section,
High Court of Madras

+1 cc to M/s.W.Camyles Gandhi, Advocate SR.No.78552

+1 cc to Mr.D.Shivakumaran, Advocate Sr.No.78351

AKM/23.10.19/6P-7C /

order in
Crl. R.C. No.309 of 2014



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