

Bail Slip

The Appellant/Accused, namely S.Pachaikani S/o.Shanmuga Sundaram Nadar Accused in CRL A.NO.177/12 dated 30.01.2014 on the file of the VII Additional Sessions Judge, City Civil Court, Chennai was enlarged on bail in MP.NO.1/14 IN CRL RC.NO.490/2014 vide this Hon'ble court order dt.02.06.2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.490 of 2014

S.Pachaikani ... Petitioner/Accused

Vs.

M/s.Sri Velmurugan Transports,
Represented by its Power Agent,
Mr.Muthuramalingam,
No.254, Walltax Road,
Chennai-600 003. ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 05.09.2012 passed in C.C.No.6968 of 2001 on the file of the Metropolitan Magistrate Court (Fast Track Court No-I), Egmore, Chennai-8, confirmed by the judgment and order dated 30.01.2014 passed in C.A.No.177 of 2012 on the file of the VII Additional Sessions Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Thiyagarajan

For Respondent : Mr.V.Arul Kumar

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 05.09.2012 passed in C.C.No.6968 of 2001 on the file of the Metropolitan

Magistrate Court (Fast Track Court No-I), Egmore, Chennai-8, confirmed by the judgment and order dated 30.01.2014 passed in C.A.No.177 of 2012 on the file of the VII Additional Sessions Judge, City Civil Court, Chennai.

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

3. The facts of the case in a nutshell are as under:

3.1 It is the case of the complainant that they are transport operators and the accused had hired some lorries from them, towards which, the accused gave a cheque dated 25.02.2001, for Rs.85,000/-, which, when presented for clearance, returned unpaid with the endorsement "Funds Insufficient". The complainant issued a statutory demand notice dated 30.03.2001. Since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.6968 of 2001 before the Metropolitan Magistrate Court (Fast Track Court No-I), Egmore, Chennai-8, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

3.2 On behalf of the complainant, one witness was examined and seven exhibits were marked.

3.3 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as DW1 and marked five exhibits.

3.4 After considering the evidence on record and on hearing either side, the Trial Court, by judgment and order dated 05.09.2012 in C.C.No.6968 of 2001, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay a sum of Rs.85,000/- as compensation, in default to undergo three months simple imprisonment.

3.5 The appeal in C.A.No.177 of 2012 filed by the accused was dismissed by the VII Additional City Civil Court, Egmore, Chennai, on 30.01.2014.

3.6 Challenging the concurrent findings of fact by the Courts below, the accused has preferred the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.M.Thiyagarajan, learned counsel for the accused and Mr.M.Guruprasad, learned counsel for the complainant.

5. The learned counsel for the accused submitted that the accused has died on 06.06.2017 and submitted a copy of the death certificate of the accused.

6. The death of the accused will not abate the revision petition when the same is admitted. Therefore, this Court perused the evidence on record.

7. At this juncture, 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.¹:

"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."

8. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in Bir Singh Vs. Mukesh Kumar², 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"

9. 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."

10. The learned counsel for the accused contended that both the Courts below have not appreciated the evidence of Pachaikani (DW1-Accused) and Exs-D1 to D5, properly. In other words, he contended that the accused had discharged the liability.

11. However, this Court finds that both the Courts below have appreciated the evidence in the right perspective. Exs-D1 to D5 have been signed by Mayazhagu, whereas, it is the case of the complainant that the receipts can be issued only by the Manager Jothikumar and not by Mayazhagu, who was working as a Clerk in the complainant's company. At this juncture, it may be relevant to extract the following paragraph in the judgment of the Appellate Court:

"...But absolutely there is no acceptable evidence to conclude that Mayazhagu was authorized to receive amount on behalf of the complainant's company. On the other hand, PW1 during his cross-examination has specifically states as follows:

“ஜோதிசுமாரை தவிர வேறு எவரும் பணம் வசூல் செய்ய அதிகாரம் இல்லை”.

Moreover, the said Mayazhagu was not examined on behalf of the accused to prove Exs-D2 to D5 voucher. The accused has not taken any steps to summon the said Mayazhagu to give evidence on behalf of the accused. Moreover, in Exs-D2 to D5 the name of the complainant's company does not find a place. Exs-D2 to D5 does not bear the seal of the complainant's company. DW1 during his cross-examination has stated as follows:

“எதிரி நிறுவனத்திடமிருந்து எ.சா.ஆ.1 லிருந்து எ.சா.ஆ.5 வரை சூல் எதுவும் இல்லை என்றால் சரிதான். வாதி நிறுவனத்தின் பெயர் இருக்கிறதா இல்லையா என்று தெரியாது. எனக்கு எழுதப்பட்டிருக்க தெரியும். தமிழ்தான் தெரியும். எ.சா.ஆ.1லிருந்து எ.சா.ஆ.5ல் என் நிறுவனத்தின் பெயர் எதுவும் குறிப்பிடவில்லை.”

So absolutely there is no acceptable evidence to conclude that the amount of Rs.85,000/- was paid by the accused to the complainant by Exs-D2 to D5 vouchers."

12. In view of the above, this Court does not find any infirmity or perversity in the orders passed by the Courts below, warranting interference.

In fine, this criminal revision is dismissed as being devoid of merits.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Metropolitan Magistrate,
(Fast Track Court No-I),
Egmore, Chennai-8
2. The VII Additonal Sessions Judge, City Civil Judge,
Chennai.

Copy to:
The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.V.Arul kumar , Advocate SR.No. 81122

Cr1.R.C.No.490 of 2014

A.SK(20/01/2020)

सत्यमेव जयते
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