

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.789 of 2019
and Crl.M.P.No.11359 of 2019

S.Mohan Raj

..

Petitioner/Accused-1

Vs.

State represented by
Inspector of Police,
Sathuvachari Police Station,
Vellore.

.. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 22.03.2012 passed in C.C.No.717 of 2002 on the file of the Judicial Magistrate Court No.V, Vellore, confirmed by the judgment and order dated 15.03.2017 passed in C.A.No.37 of 2016 on the file of the Principal District and Sessions Court, Vellore.

For Petitioner : Mr.T.Surendran

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

O R D E R

This petition has been filed seeking to set aside the judgment and order dated 22.03.2012 passed in C.C.No.717 of 2002 on the file of the Judicial Magistrate Court No.V, Vellore, confirmed by the judgment and order dated 15.03.2017 passed in C.A.No.37 of 2016 on the file of the Principal District and Sessions Court, Vellore.

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

2.1 It is the case of the prosecution that Mohanraj (A1) was working as a Typist in the erstwhile Pattukkottai Alagiri Transport Corporation (hereinafter would be referred to as "PATC"), Rangapuram, Vellore. Neelakandan (A2) was working as an Attendant in the Tamil Nadu Veterinary and Animal Sciences

University, Vellore. Mohanraj (A1) obtained a sum of Rs.30,000/- from Neelakandan (A2) promising to get him a job as Conductor in PATC, but, did not keep up his promise. Therefore, Neelakandan (A2) started pestering Mohanraj (A1) for the return of money. To satisfy Neelakandan (A2), Mohanraj (A1) took a cheque leaf bearing No.975348 (Ex-P2) of PATC of Indian Overseas Bank, filled it up for Rs.1,75,000/- and gave it in the name of Neelakandan (A2). Neelakandan (A2) encashed the said cheque. In order to cover the misappropriation, Mohanraj (A1) made false entries in the P.F. Trust Cheque Book accounts. When the matter came to the knowledge of the authorities, a case in Crime No.148 of 1997 was registered and after completing the investigation, the respondent/police filed a charge sheet in C.C.No.717 of 2002 against Mohanraj (A1) and Neelakandan (A2) for the offences under Sections 381, 467, 471, 477 r/w 109 and 409 IPC before the Judicial Magistrate Court No.V, Vellore .

2.2 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. The charges for the aforesaid offences were framed against Mohanraj (A1) and Neelakandan (A2). When questioned, the accused pleaded "not guilty".

2.3 To prove their case, the prosecution examined ten witnesses and marked thirteen exhibits and one material object.

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

2.5 After considering the evidence on record and hearing either side, the Trial Court acquitted Mohanraj (A1) and Neelakandan (A2) of the offence under Section 409 IPC, but, convicted them of the other offences and sentenced them to undergo simple imprisonment till the rising of the Court.

2.6 Challenging the conviction and sentence, Mohanraj (A1) filed C.A.No.37 of 2016, which has been dismissed by the Principal District and Sessions Court, Vellore, on 15.03.2017.

2.7 Aggrieved by the conviction and sentence passed by the Courts below, Mohanraj (A1) filed the present revision petition with a delay of 739 days, to condone which, he filed CrI.M.P.No.10904 of 2019 under Section 5 of the Limitation Act. This Court condoned the delay and took up the main case for hearing.

3. Heard Mr.T.Surendran, learned counsel for Mohanraj (A1)/accused and Mrs.P.Kritika Kamal, learned Government Advocate

(Crl.Side) for the respondent/State.

4. The learned counsel for the petitioner submitted that the original forged cheque was not marked before the Trial Court and only a photocopy of the same was marked as Ex-P2. He further contended that because of the sentence of one day simple imprisonment, Mohanraj (A1) has not been able to get reinstatement and other service benefits.

5. Per contra, the learned Government Advocate (Crl.Side) refuted the contentions made by the learned counsel for the petitioner.

6. This Court gave its anxious consideration to the rival submissions.

7. Before adverting to the rival submissions, 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.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

1 (2004) 7 SCC 659

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 Kumar*², 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. A three Judge Bench of the Supreme Court in *Girish Kumar Suneja Vs. CBI*³, 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. The relevant paragraph is extracted 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."

11. From the above judgments, it is clear that the revisional Court should not embark upon re-appreciation of the evidence like a second appellate Court and upset the findings of fact rendered by the Courts below after due appreciation of the evidence on record.

12. In this case, the prosecution has proved beyond cavil that Mohanraj (A1) was working as Typist in PATC. The photocopies of the impugned cheque (Ex-P2) and PATC cheque register Pg.111 (Ex-P3) were sent to the Tamil Nadu Forensic Sciences Laboratory along with the sample signatures of the officers of PATC viz., R.Sreedharan (PW2), M.Chandrasekaran (PW3) and Ramarathinam (PW4), who were authorized to sign the cheques, for opinion.

13. S.Balakrishnan (PW1), expert in document analysis, has compared the signature and has found that the signature in the impugned cheque and handwriting in the PATC cheque register Pg.No.111 have been made by Mohanraj (A1). That apart, R.Sreedharan (PW2), M.Chandrasekaran (PW3) and Ramarathinam (PW4) have also stated that they had not issued the impugned cheque.

14. The contention of the learned counsel for the petitioner that only the photocopy of the cheque was sent to the Handwriting expert for opinion and therefore, the accused should be acquitted, cannot be countenanced, because, S. Balakrishnan (PW1), the Handwriting expert has stated that the photocopy of the cheque was sufficient to compare with the admitted signatures viz., S1 to S91 documents (Ex-P4) and A1 to A31 documents (Ex-P4) that were given by the accused for comparison. That apart, the evidence on record shows that the PATC cheque register (Ex-P3) has been manipulated by Mohanraj (A1). Thus, in the light of overwhelming materials against the accused, it cannot be stated that the findings of the Courts below suffer from perversity or infirmity warranting interference.

15. In fact, the Trial Court should not have imposed a fleabite sentence of one day simple imprisonment against the accused in a case of this nature, where, the accused have forged the cheque of a Public Transport Corporation and cheated the organization.

In the result, the revision petition is dismissed as being devoid of merits. Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

nsd

To

1.The Judicial Magistrate No.V,
Vellore.

2.-do-Thro'The Chief Judicial Magistrate, Vellore.

3.The Principal District and Sessions Judge,
Vellore.

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4.The Inspector of Police,
Sathuvachari Police Station,
Vellore.

5.The Public Prosecutor,
High Court, Madras.

PVS (CO)
CB(27/09/2019)

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