

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.822 of 2019
and Crl.M.P.No.12016 of 2019

Uthirapathy .. Petitioner/Accused

Vs.
Periyasami .. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 23.07.2019 passed in Crl.M.P.No.104 of 2019 in C.A.No.15 of 2018 on the file of the III Additional District and Sessions Court, Virudhachalam.

For Petitioner : Mr.M.Soundar Vijay Arul Ram

O R D E R

This revision petition has been filed seeking to set aside the order dated 23.07.2019 passed in Crl.M.P.No.104 of 2019 in C.A.No.15 of 2018 on the file of the III Additional District and Sessions Court, Virudhachalam.

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

2.1 The petitioner has been convicted in S.T.C.No.242 of 2015 on 26.02.2018, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), challenging which, the petitioner has preferred C.A.No.15 of 2018 and the same is pending on the file of the III Additional District and Sessions Court, Virudhachalam.

2.2 While so, the petitioner filed a petition under Section 293 Cr.P.C. for sending the impugned cheque to the Handwriting expert for opinion, on the allegation that the writings in the cheque were not of his. The Appellate Court has dismissed the said petition on 23.07.2019, aggrieved by which, the petitioner is before this Court under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.M.Soundar Vijay Arul Ram, learned counsel for the petitioner, who submitted that, it is the case of the petitioner that he had given a blank cheque and it has been filled by the complainant and presented.

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

5. A three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI¹, 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.

"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. 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"

7. 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."

8. In this case, the petitioner did take steps to send the cheque to the Handwriting expert for opinion during trial. It is seen that the petitioner had filed a petition even before the Trial Court for sending the cheque to the Handwriting expert for opinion, but the same was dismissed. It is not the case of the petitioner that he has not signed the cheque. It is the case of the petitioner that the cheque was filled up by the complainant. Assuming for a moment that the complainant had filled up the other portions of the cheque, the same cannot be said to be

illegal in view of Section 20 of the NI Act. Under such circumstances, this Court does not find any infirmity in the order so passed by the Trial Court warranting interference.

In the result, this criminal revision petition is dismissed. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd
To

The III Additional District and Sessions Judge,
Virudhachalam.

Crl.R.C.No.822 of 2019
and Crl.M.P.No.12016 of 2019

A.SK(18/09/2019)



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