

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 24.07.2019
PRONOUNCED ON : 09.08.2019
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1315 of 2017

Mani .. Petitioner

Vs

C.Saravana Kumar
Respondent ..

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the judgment and conviction passed in S.T.C.No.372 of 2014 dated 20.01.2016 on the file of Judicial Magistrate No.I, Kancheepuram confirmed in C.A.No.7 of 2016 dated 08.08.2017 on the file of the District and Sessions Court No.II, Kancheepuram.

For Petitioner : Mr.M.Rajkumar
For Respondent : Mr.N.Kannan

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 08.08.2017 passed by the Sessions Judge, Sessions Court No.II, Kancheepuram in C.A.No.7 of 2016 confirming the conviction and sentence dated 20.01.2016 passed by the Judicial Magistrate No.I, Kancheepuram in S.T.C.No.372 of 2014.

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

3.It is the case of the complainant that, he is related to the accused and that the accused had borrowed a sum of Rs.7,02,000/- as hand loan on 20.06.2013, agreeing to repay the same within three months; towards the said liability, the accused issued a cheque dated 09.03.2014, which when presented by him, was returned with an endorsement "funds insufficient" on 13.03.2014; he issued a statutory notice dated 27.03.2014 which was received by the accused on 28.03.2014; since the accused did not comply with the demand notice, he filed S.T.C.No.372 of 2014 before the Judicial Magistrate No.I, Kancheepuram against the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

4. On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

5. To prove the case, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P4. The complainant was cross-examined by the accused.

6. When the accused was questioned under Section 313 Cr.P.C., he denied the same.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.01.2016 in S.T.C.No.372 of 2014, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment. Challenging the said conviction and sentence, the accused filed C.A.No.7 of 2016 and the same has been dismissed by the Sessions Court No.II, Kancheepuram on 08.08.2017. Challenging the orders passed by the two Courts below, the accused has filed the present revision petition.

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

9. 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. [(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."

10. 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."

11.Learned counsel for the accused submitted that the complainant has failed to prove the debt inasmuch as the complainant has not marked any document like promissory note etc., to show that the accused had borrowed the money. Learned counsel further contended that the complainant has also not proved the source for giving the loan.

12.In the cross-examination, the complainant (PW1), has stated that the accused is his nephew, who is working in a silk saree shop; the accused told him that he needed money to make payment to the shop only; he did not take any document from the accused. The complainant (PW1) further stated that the accused approached him on 18th and he (complainant) took two days to raise the amount through his friends and by pledging some jewels and gave it to the accused.

13.When the accused was questioned under Section 313 Cr.P.C., he has stated that he has given Rs.50,000/- and that he will pay the balance to the complainant. The accused has not denied the execution of the cheque. Therefore, the burden under Section 139 of the NI Act is on the accused to prove that the cheque was not issued for the alleged debt. Of course, the accused can discharge the burden under Section 139 of the NI Act, by preponderance of probability as laid down by the Supreme Court in Rangappa Vs Sri Mohan [2010 (4) CTC 118]. Unfortunately, the accused had not discharged the said burden.

14.The trial Court and the appellate Court have appreciated the evidence in the right perspective and this Court does not find any infirmity or perversity in their findings. However, learned counsel for the accused submitted that the accused has already paid Rs.1.5 lakhs to the complainant. Learned counsel for the complainant conceded the same and stated that if the accused pays Rs.4.5 lakhs, the complainant is ready and willing to amicably settle the matter. However, learned counsel for the accused submitted that the accused does not have any money to pay to the complainant. In this case, the complainant is none other than the uncle of the accused and that the complainant had given the hand loan to the accused, since the accused was in deep trouble at the place of employment.

15.Taking all these into consideration, this Court is of the view that interests of justice will be served, if the sentence of one year rigorous imprisonment is reduced to six months rigorous imprisonment.

In the result, this revision petition is partly allowed. The conviction of the accused under Section 138 of the NI Act stands confirmed but, the sentence is reduced from one year rigorous imprisonment to six months rigorous imprisonment. It is always open to the parties to file an application under Section 147 of the NI Act for compounding the offences before this Court at any time before the completion of serving the sentence of six months by the accused. The trial Court is directed to secure the accused and commit him in prison for serving the sentence. Registry is directed to send the original records to the appellate Court and the trial Court forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Kancheepuram.

2.The District and Sessions Court No.II,
Kancheepuram.

3.The Superintendent
Central prison Puzhal Chennai

4.The Superintendent of Police
Kancheepuram

copy to

The Section Officer
Criminal Section High Court,
Madras

+1 cc to M/s.L.Srileka Advocate sr68904

CRL.R.C.No.1315 of 2017

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