

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.27836 and 27837 of 2011

D. Jayaraman		.. Petitioner in both O.ps
	Vs.	
R. Sundaram		..Respondent in both O.ps

Prayer in Crl.O.P.No. 27836 of 2011: Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to set aside the order in Crl.R.C. Nos. 114 of 2008 dated 29.12.2008 on the file of the learned Additional District and Sessions Judge, Coimbatore (Fast Track II, Coimbatore) and enhance the punishment and also award compensation Under Section 357 of C.r.p.c order dated 26.06.2008 in C.C.No. 191 of 2007 on the file of Judicial Magistrate-II, Coimbatore.

Prayer in Crl.O.P.No. 27837 of 2011: Criminal Original petition has been filed under Section 482 of Criminal Procedure Code to set aside the portion of the order i.e "one year imprisonment and Rs.1,000/- (One Thousand only) fine"passed on 26.06.2008 in C.C.No. 385 of 2007 on the file of Judicial Magistrate No.2 Coimbatore (in charge) confirmed by the District and Sessions Judge of Coimbatore on 29.12.2008 in Criminal Appeal No.115 of 2008 and pass orders enhancing the sentence period and imposing double the cheque amount as fine amount and also award compensation under Section 357 of Criminal Procedure code.

(In both Crl.O.Ps)

For Petitioner : Mrs.G. Devi

For Respondent : No Appearance

COMMON ORDER

These petitions are being filed by the petitioner to set aside the orders in Crl.R.C. Nos. 114 and 115 of 2008 dated 29.12.2008 on the file of the learned Additional District and Sessions Judge, Coimbatore (Fast Track II, Coimbatore) and

enhance the punishment Under Section 357 of Cr.p.c.

2. The facts of the case is that the respondent borrowed Rs.10,00,000/- from the petitioner herein and issued 5 post dated cheques and when the same was presented to the bank, it was returned as the funds was insufficient. Hence he filed C.C.No.191 of 2007 against the respondent under Section 138 r/w Section 142 of Negotiable Instruments Act, 1881 r/w Section 200 of Criminal Procedure Code on the file of the Judicial Magistrate No.II of Coimbatore and the learned Judge vide order dated 26.06.2008 held that the respondent has committed offence U/s 138 of Negotiable Instruments Act and imposed Rs.1,000/- as fine, and failing which he has to go one month imprisonment. Aggrieved over the same, he filed Criminal Revision Petitions No.114 and 115 of 2008 on the file of the District and Sessions Judge, Coimbatore and the respondent/accused also filed a Criminal Appeal Nos.242 and 247 of 2008 before the District and Sessions Judge, Coimbatore and the learned Judge, District Court, Coimbatore dismissed all the petitions vide order dated 29.12.2008.

3. The learned counsel appearing for the petitioner would submit that the Courts below have failed to appreciate the higher value of cheque and without considering the same awarded a meager amount as fine. He further contend that the Court below after having held that the respondent has committed offence under section 138 of the Negotiable Instruments Act, ought not to have imposed only a minimum punishment and prays to allow the appeal.

4. This Court while rendering Judgment in CrI.O.P.(MD)Nos. 12216 of 2010 and 12244 of 2010 with regard to similar facts of the present case has held that the High Court can entertain a petition under Section 482 of Cr.P.s when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the Revisional Court.

5. The Hon'ble Apex Court while rendering Judgment in Civil Appeal No.58 of 1997 [Krishnan and another Vs. Krishnaveni and another] explained in detail regarding the powers of High Court under Sections 482 and 483 of Cr.P.C and the relevant paras are extracted hereunder:

8.The Object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the

procedure or to met out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the high Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 391(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process of miscarriage of justice or to correct irregularities. Incorrectness committed by inferior criminal Court in its juridical process of illegality of sentence or order.

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when when the High Court on examination of the records finds that there is a grave miscarriage of justice or abuse of the process of the Courts or the required statutory procedure has not been complied with or there is a failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is therefore to meet the ends of justice or to prevent the abuse of the process that the High Court is preserved with inherent power and would be be justified, under such circumstances to exercise the inherent power and in an appropriate case even revisional power u/section 391 (1) r/w Section 401 of the code.

6. On a perusal of the above Judgments in similar facts of the case it is clear, that when there is a serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised and can correct the mistake committed by the Revisional Court.

7. But, the issue involved in this present case, is that whether the 2nd revision is permissible under Section 482 of Cr.P.C or not is the only challenge before this Court and this Court is of the view that the above petitions filed u/s 482 of Cr.P.C is not maintainable.

8. Considering the facts and circumstances of the case and on a perusal of above Judgments, this Court feels that these petitions filed under Section u/s 482 of Cr.P.C is not at all maintainable.

With the above observations the above Crl.O.P.s are disposed of. However, this order will not stand in the way for the petitioner to work out his remedy in the proper manner known to law.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Additional District and Sessions Judge,
Coimbatore (Fast Track II, Coimbatore)

2. The Judicial Magistrate II,
Coimbatore.

+2cc to Mr.V.Raghupathi, Advocate, S.R.No. 54

Crl.O.P.Nos.27836 and 27837 of 2011

GMR(CO)
GN(24/02/2020)