

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.39 of 2012

R.Sundaram

...Revision Petitioner
/Appellant/Accused

Vs.

K.Velusamy

...Respondent/Respondent
/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 29.12.2008, passed by the Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore, in C.A.No.246 of 2008, confirming the judgment of conviction and sentence, dated 26.06.2008, passed by the Judicial Magistrate No.II, Coimbatore, in C.C.No.331 of 2007.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mrs.G.Devi

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 29.12.2008, passed by the Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore, in C.A.No.246 of 2008, confirming the judgment of conviction and sentence, dated 26.06.2008, passed by the Judicial Magistrate No.II, Coimbatore, in C.C.No.331 of 2007.

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

3.It is the case of the complainant that the accused was into finance business and the complainant had invested Rs.45,000/- on 20.08.2003 with the accused, for which, the accused had given a deposit receipt bearing No.3867; on maturity, the complainant handed over the deposit receipt to the accused and the accused gave a cheque dated 28.04.2006 for

Rs.58,152/- (Ex.P1); when the said cheque was presented by the complainant, it was dishonoured on the ground "funds insufficient" vide return memo dated 09.09.2006 (Ex.P2); the complainant issued a statutory demand notice dated 07.10.2006 (Ex.P4), which was received by the accused vide Acknowledgment Card (Ex.P5); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.331 of 2007 before the Court of Judicial Magistrate No.II, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, against the accused.

4.The complainant examined himself as P.W.1 and one Shanmuganathan as P.W.2 and marked Exs.P1 to P9.

5.When the accused was questioned under Section 313 Cr.P.C., he denied the allegations and did not come forward to give any explanation as to the circumstances, under which, the impugned cheque came into the hands of the complainant. No witness was examined nor any document marked from the side of the accused.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 26.06.2008, in C.C.No.331 of 2007, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month. The trial Court further directed that the substantive sentence of one year simple imprisonment shall be undergone by the accused concurrently with the sentence imposed on him in C.C.No.191 of 2007 (which is the subject matter of CrI.R.C.No.44 of 2012).

7.The appeal in C.A.No.246 of 2008 that was filed by the accused was dismissed by the Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore, on 29.12.2008.

8.Challenging the concurrent findings of the two Courts below, the accused has preferred the present Criminal Revision Case, before this Court, under Section 397 r/w. 401 Cr.P.C.

9.Heard Mrs.R.Hemalatha, learned counsel for the accused and Mrs.G.Devi, learned counsel for the complainant.

10.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the

Supreme Court has held as under:

"17.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [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. "

(emphasis supplied)

11.The complainant, who examined himself as P.W.1, has spoken about the deposit made with the accused, the maturity of the deposit, the issuance of the impugned cheque by the accused in lieu of the deposit receipt; its presentation and dishonour, issuance of the statutory demand notice, and the failure of the accused to repay the amount. In this case, the complainant has examined Shanmuganathan, Branch Manager, State Bank of India, as P.W.2 in order to show that the complainant presented the cheque with them and the cheque was returned unpaid by the accused Bank for insufficiency of funds. In the cross-examination of the complainant (P.W.1), the accused had suggested that, he was not a partner in the finance establishment and that, he had not issued the impugned cheque. Except making such a suggestion, the accused had not produced any credible material to substantiate it. Both the Courts have gone into all the aspects of the case and this Court does not find any infirmity in the findings of fact arrived at by them, warranting interference.

12.The learned counsel for the accused submitted that the accused had undergone the sentence imposed on him. Except making such a representation, no material has been placed before this Court to substantiate this assertion.

13.In fine, this Criminal Revision Case is dismissed and the judgments of the two Courts below are confirmed. The trial Court is directed to secure the accused and commit him to prison to undergo the remaining sentence.

If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be. It is always open to the parties to file an application before the trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under

Section 147, ibid. before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in Crl.R.C.No.39 of 2012.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

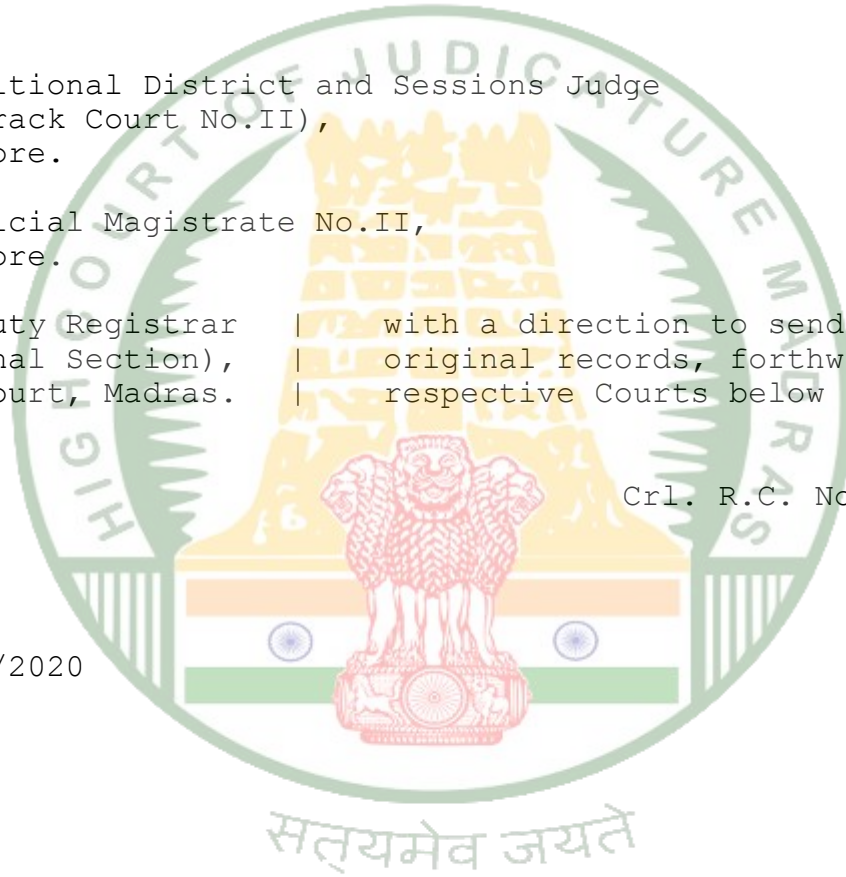
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Copy to :

- 1.The Additional District and Sessions Judge
(Fast Track Court No.II),
Coimbatore.
- 2.The Judicial Magistrate No.II,
Coimbatore.
- 3.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, forthwith, to the
High Court, Madras. | respective Courts below

Crl. R.C. No.39 of 2012

KJ (CO)
KKV/12/08/2020



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