

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.42 of 2012

R.Sundaram

...Revision Petitioner
/Appellant/Accused

Vs.

K.R.Marudhachalam

...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.244 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.282 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.244 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.282 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 received Rs.30,000/- on 30.11.2003 and Rs.24,000/- on 26.11.2003 as deposit from the complainant; after the maturity of the two deposits, when the complainant approached the accused, he (accused) collected the two deposit receipts and gave two cheques, both dated 12.02.2006, one for

Rs.24,376/- (Ex.P1) and the other for Rs.30,420/- (Ex.P2), drawn on Indian Bank, Ram Nagar Branch, in favour of the accused; the complainant presented both the cheques on 20.07.2006 and both the cheques were returned unpaid with the endorsement "funds insufficient" vide return memo (Exs.P3 and P4); the complainant issued a statutory demand notice dated 09.08.2006 (Ex.P6), which was not received by the accused and therefore, the returned cover was marked as Ex.P7; since the accused did not repay the amount, the complainant initiated a prosecution in C.C.No.282 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 marked Exs.P1 to P7.

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 cheques came into the possession 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.282 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.244 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

Kuldip 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 stated that, the accused was into finance business; the complainant had deposited Rs.30,000/- on 30.11.2003 and Rs.24,000/- on 26.11.2003 with the accused; the two deposit receipts were taken back by the accused on the expiry of the deposits and the impugned cheques for Rs.24,376/- and Rs.30,420/-, both dated 12.02.2006, were issued; both the cheques were returned unpaid with the endorsement "funds insufficient"; hence, a statutory demand notice was issued and the present prosecution was lodged.

12.The accused has not denied his signature on the impugned cheques and had only taken a stand that he has discharged the liability. However, the accused has not placed any credible material to hold that he had discharged the liability.

13.Though the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability, as held by the Supreme Court in Rangappa Vs. Sri Mohan [2010 (4) CTC 118], even that has not been done in this case. In such view of the matter, this Court does not find any infirmity in the findings of fact arrived at by the two Courts below, warranting interference.

14.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.

15.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.42 of 2012.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

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 (Criminal Section),
High Court, Madras. | with a direction to send back the
original records, forthwith, to the
respective Courts below

Crl. R.C. No.42 of 2012

KJ(CO)
KKV/12/08/2020

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