

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.44 of 2012

R.Sundaram

...Revision Petitioner
/Appellant/Accused

Vs.

D.Jayaraman

...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.242 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.191 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.242 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.191 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 borrowed Rs.10,00,000/- as loan from the complainant, in discharge of which, the accused issued two promissory notes, one dated 25.06.2005 (Ex.P1) and the other dated 28.06.2005 (Ex.P2); the accused issued five cheques for Rs.2,00,000/- each, out of which, two cheques dated 27.03.2006 (Ex.P3) and 03.04.2006 (Ex.P4), when presented by the complainant, were dishonoured on the ground "funds insufficient" vide return memo dated 02.08.2006 (Ex.P5); the complainant issued a statutory demand notice dated 05.08.2006 (Ex.P7), which was not received by the accused and the returned cover was marked as Ex.P9; therefore, the complainant initiated a prosecution in C.C.No.191 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.

him to 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.191 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.

7. The accused filed C.A.No.242 of 2008 challenging the aforesaid conviction and sentence, and the complainant filed CrI.R.C.No.114 of 2008 for enhancement of the sentence. The Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore, heard both the cases and by common judgment dated 29.12.2008, dismissed both the cases and confirmed the judgment of the trial Court.

8. Aggrieved by the concurrent findings of guilt recorded by 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. Mrs.R.Hemalatha, learned counsel for the accused contended that the complainant has not proved the debt properly.

10. Per contra, Mrs.G.Devi, learned counsel for the complainant, refuted the said contention.

11. This Court gave its anxious consideration to the rival submissions.

12. 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)

13. The complainant, who examined himself as P.W.1, has spoken about the loan of Rs.10,00,000/- that was given to the accused, execution of the two promissory notes by the accused, issuance of the impugned cheques, their presentation and dishonour, issuance of the statutory demand notice, its return unserved and the non-payment of the borrowed amount by the accused. In the cross-examination of the complainant (P.W.1), the accused has not disputed his signature in the impugned cheques. The accused had taken a defence that the cheques were

cheque, the burden under Section 139 of the Negotiable Instruments Act would fall upon him.

14. 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. Merely suggesting to the complainant (P.W.1) that, the cheques were issued only as security and not towards any loan, would not be sufficient to hold in favour of the accused, especially in the light of the marking of the two promissory notes as Exs.P1 and P2. 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.

15. 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.

16. 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.44 of 2012.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mnkn

Copy to :

1. The Additional District and Sessions Judge
(Fast Track Court No.II),
Coimbatore.

<https://hcservices.ecourts.gov.in/hcservices/>

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 appellate Court
---	--	---