IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.01.2020
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1091 of 2013

Jepi Babu ..Petitioner/Accused

Vs

R.Deepak ..Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 21.06.2013 passed by the IV Additional District and Sessions Judge, Coimbatore in C.A.No.248 of 2012 confirming the judgment and order dated 02.08.2012 passed by the Judicial Magistrate, FTC Magisterial Level II, Coimbatore in C.C.No.106 of 2011.

For Petitioner : Ms.Preethikaa Ravichandrabaabu
For Respondent : Notice not served

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 21.06.2013 passed by the IV Additional District and Sessions Judge, Coimbatore in C.A.No.248 of 2012 confirming the judgment and order dated 02.08.2012 passed by the Judicial Magistrate, FTC Magisterial Level II, Coimbatore in C.C.No.106 of 2011.

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, he is a dealer in colour fish and the accused used to frequently purchase colour fish from him; towards this transaction, a sum of Rs.76,000/- was due from the accused, for which, he gave a cheque dated 07.08.2009 (Ex.P1) drawn on ICICI Bank; the complainant presented the said cheque on 11.08.2009 and it was returned with the endorsement "account closed" vide return memo (Ex.P6); the complainant issued a statutory demand notice dated 08.09.2009 (Ex.P2) which was sent by the registered post as well by certificate of posting (Ex.P3); the accused received the registered post on 12.09.2009 vide acknowledgment card (Ex.P4); the accused neither replied to the notice nor complied with the demand and therefore, the complainant initiated a prosecution against the accused in S.T.C.No.755 of 2009 before the Judicial

Magistrate No.VII, Coimbatore for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), which on transfer to the Court of the Judicial Magistrate, FTC Magisterial Level II, Coimbatore, was renumbered as C.C.No.106 of 2011.

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

5.The complainant examined himself as P.W.1 and marked Exs.P1 to P6. The complainant examined Ramkumar (P.W.2), Manager, Karur Vysya Bank, where he was having his account to prove the presentation of the impugned cheque. The complainant also examined Devarajan (P.W.3), Manager, ICICI Bank, where the accused was having his account to prove that the cheque was returned with the endorsement account closed.

6.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he simply denied the same, but did not offer any explanation as to the circumstance under which, the cheque signed by him came into the custody of the complainant. No witness was examined from the side of the accused nor any document marked.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 02.08.2012 in C.C.No.106 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo three months simple imprisonment and to pay fine of Rs.3,000/-, in default to undergo one month simple imprisonment. The appeal in C.A.No.248 of 2012 that was filed by the accused, was dismissed by the IV Additional Sessions Court, Coimbatore on 21.06.2013. Challenging the concurrent findings of the two Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

8.Notice has not been served on the complainant. In a criminal revision, the respondent is required to be heard, only when the Court proposes to pass an order prejudicial to him.

9.Heard Ms.Preethikaa Ravichandrabaabu, learned counsel for the accused.

10.Before adverting to the submissions of the learned counsel for the accused, it is necessary to refer 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. .... "
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> (emphasis supplied)

11.Coming to the case at hand, the complainant who examined himself as P.W.1, has spoken about the business transactions he had with the accused, the amount due from the accused, the issuance of the impugned cheque, its dishonour on the ground 'account closed', issuance of the statutory demand notice, receipt of the same and the failure of the accused to comply with the demand.

12.The accused has not denied his signature in the impugned cheque. Despite that, the complainant examined the Branch Manager of the ICICI bank, where the accused was having his account to prove that the cheque was returned with the endorsement account closed. In NEPC Micon Ltd. and Others Vs. Magma Leasing Ltd. [(1999) 4 SCC 353], the Supreme Court has held that Section 138 of the NI Act will stands attracted, even in a case, where the cheque has been returned with the endorsement "account closed".

13.Learned counsel for the accused submitted that the complainant has not proved the debt at all and therefore, this criminal revision deserves to be allowed. In support of this contention, she placed strong reliance on Vijay Vs. Laxman and Another [(2013) 3 SCC 86], the trial Court had acquitted the accused of the offence under Section 138 of the NI Act, on the ground that the accused has established that he had issued the cheque only as a security to the complainant and that, the complainant had misused the cheque, because of a quarrel between the accused and the complainant's father Shyam Sunder. The High Court reversed the acquittal in appeal. On those facts, the Supreme Court held that the complainant had failed to satisfactorily prove the debt. In this case, the facts are totally different. The accused has not given any explanation as to the circumstance under which, the cheque signed by him went into the hands of the complainant. Very recently, in Uttam Ram Vs. Devinder Singh Hudan & Another [(2019)10 SCC 287], the Supreme Court has held as follows :

> "20.The Trial Court and the High Court proceeded

as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

21. There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act ... ..."

In such view of the matter, this Court does not find any infirmity in the concurrent findings of the two Courts below, warranting interference.

Ex consequenti, this Criminal Revision is dismissed being devoid of merits. The trial Court is directed to secure the accused and commit him in prison to undergo the remaining period of sentence, if any. 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 NI 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.1091 of 2013. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.IV Additional District and Sessions Court,
Coimbatore.

2.Judicial Magistrate Court,
FTC Magisterial Level II,
Coimbatore.

3.The Deputy Registrar,
Criminal Side,
High Court, Madras.

+1cc to Mr.S.Karthikai Balan, Advocate, SR.No.5970.

CRL.R.C.No.1091 of 2013

BP(CO)
CSR: 28.02.2020