

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.1317 of 2013

1.M/s.Bright Spinners,
Represented by its Partner
K.Thangaraju

2.K.Thangaraju

3.K.Devasenathipathi ... Revision Petitioners

Vs.

D.Sampathkumar ... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 17.09.2013, passed by the V Additional District and Sessions Judge, Coimbatore, in C.A.No.270 of 2012, confirming the judgment of conviction and sentence, dated 15.09.2012, passed by the Judicial Magistrate, Fast Track Court No.II at Magisterial Level, Coimbatore, in S.T.C.No.46 of 2012.

For Petitioners : Mr.B.Gopalakrishnan

For Respondent : Mr.V.Sivakumar

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 17.09.2013, passed by the V Additional District and Sessions Judge, Coimbatore, in C.A.No.270 of 2012, confirming the judgment of conviction and sentence, dated 15.09.2012, passed by the Judicial Magistrate, Fast Track Court at Magisterial Level No.II, Coimbatore, in S.T.C.No.46 of 2012.

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

3.It is the case of the complainant that, Thangaraju (A2) and Devasenathipathi (A3) are the partners of M/s.Bright Spinners (A1); Thangaraju (A2) borrowed Rs.3,00,000/- on 20.04.2010 for his business purposes and issued a cheque dated 03.05.2010 for Rs.3,02,000/- (Ex.P1) drawn on the United Bank of India from the account of M/s.Bright Spinners (A1); the impugned cheque was signed by Thangaraju (A2) in his capacity as the partner of M/s.Bright Spinners (A1); the complainant presented the cheque on 22.10.2010 and the same was returned with the endorsement "exceeds arrangement" on 23.10.2010, vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 22.11.2010 (Ex.P3), which was received by the accused, and a reply notice dated 08.12.2010 (Ex.P7) was issued by the accused; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.240 of 2011 before the Court of Judicial Magistrate No.5, Coimbatore, which, on transfer to the Court of Judicial Magistrate (Fast Track Court at Magisterial Level No.II), Coimbatore, was renumbered as S.T.C.No.46 of 2012.

4.The complainant examined himself as P.W.1 and marked Exs.P1 to P7. Thangaraju (A2) examined himself as D.W.1 and marked Exs.D1 to D7.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.09.2012, convicted the three accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced them as follows :

Accused	Sentence
M/s.Bright Spinners (A1)	Fine of Rs.3,000/-, in default, A2 and A3 to undergo simple imprisonment for two months each
K.Thangaraju (A2) & K.Devasenathipathy (A3)	Simple imprisonment for six months and pay a fine of Rs.3,000/- each, in default, to undergo simple imprisonment for two months each.

6.The appeal in C.A.No.270 of 2012, that was filed by the accused, was dismissed by the V Additional District and Sessions Judge, Coimbatore, on 17.09.2013.

7.Challenging the concurrent findings of the two Courts below, all the three accused have filed the present Criminal Revision Case before this Court under Section 397 r/w. 401 Cr.P.C.

8. Heard learned counsel for the accused and learned counsel for the complainant.

9. 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)

10. The learned counsel for the accused submitted that, both the Courts below have failed to appreciate the defence that was adduced by the accused, in the right perspective. He also submitted that the accused have discharged the burden under Section 139 of the Negotiable Instruments Act satisfactorily, which has been ignored by the Courts below.

11. Per contra, the learned counsel for the complainant refuted the contentions.

12. The complainant, who examined himself as P.W.1, has stated about the loan of Rs.3,00,000/- that was availed by the accused on 20.04.2010, the issuance of the impugned cheque signed by Thangaraju (A2), its presentation, its dishonour, the issuance of statutory demand notice, receipt of the reply notice, and the failure of the accused to comply with the demand.

13. This Court perused the reply notice (Ex.P7) and the evidence of Thangaraju (A2)/D.W.1. It is the case of the accused that, Sampathkumar, the complainant herein, and one Rajendran are close friends; the accused had purchased cotton yarns through them; at the time of purchase of yarns, Sampathkumar, the complainant herein, had obtained a blank cheque as security and similarly, Rajendran had also obtained a blank cheque, with which, both of them have filed two vexatious prosecutions under Section 138 of the Negotiable Instruments Act, despite the fact that no yarn was supplied. To prove that

Rajendran has initiated a separate prosecution under Section 138 of the Negotiable Instruments Act, the accused marked Exs.D1 to D7.

14.Thangaraju (A2)/D.W.1, in his evidence, has not stated as to when the impugned cheque in this case was obtained as security for the purchase of yarns. According to Thangaraju (A2)/D.W.1, the business transaction was in the year 2009-2010 and the cheques were given as security at that time. Sampathkumar (P.W.1) has categorically stated that he is not a cotton broker, but he is an agriculturalist and a cattle broker and owns extensive lands.

15.It may be pertinent to point out that the cheque in this case, viz., Ex.P1 is dated 03.05.2010 and it has been signed by Thangaraju (A2) in his capacity as the partner of M/s.Bright Spinners (A1). Whereas, the cheque (Ex.D5), for which Rajendran has initiated a separate prosecution, is dated 04.05.2010 and it has been signed by Devasenathipathy (A3) in his capacity as the partner of M/s.Bright Spinners (A1). Apart from the fact that both Sampathkumar and Rajendran have approached two different lawyers of the same chamber, there is no other satisfactory material to infer that the cheque was issued as security for the supply of yarns.

16.Sampathkumar (P.W.1), in his cross-examination, has stated that he did not obtain any document like promissory note, etc., from the accused, because, the accused promised that he will return the amount within 15 days. That apart, Thangaraju (A2)/D.W.1 has admitted that, that was the first time, cheques were given as security and there was no such instance earlier to August, 2010. Therefore, it is not the case of the accused that the complainant used to take blank cheques as security for the yarns supplied by him. It is seen that the impugned cheque in this case is dated 03.05.2010 and it was presented by the complainant only on 22.10.2010. Had the accused given the impugned cheque as security for purchasing yarns and the complainant not supplied the yarns, the accused would have issued directions to their Bank to stop payment, but, that has not been done in this case.

17.In the reply notice (Ex.P7) issued by the accused, they have stated as follows :

"Your client and the said Rajendran used to arrange for supply of cotton to my clients after getting signed blank cheques as security from my clients. My clients, after making payment, used to get back the signed blank cheques deposited by them with your client and the said Rajendran."

Whereas, in the cross-examination, Thangaraju (A2) has stated that, it was the first time that the cheques were given as security; there was no such instance earlier to August, 2010. Thus, there is apparent contradiction in the defence taken by the accused.

18. 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.

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

20. As a result, this Criminal Revision is dismissed and the judgments of the two Courts below are confirmed. The trial Court is directed to secure Thangaraju (A2) and Devasenathipathy (A3) and commit them 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 are 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.1317 of 2013.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mkn

To :

1. The V Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate,
Fast Track Court No.II at Magisterial Level,
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

+1cc to Mr.V.Sivakumar, Advocate, SR.No.6291.

+1cc to Mr.S.Gunalan, Advocate, SR.No.6315.

Crl. R.C. No.1317 of 2013

MP (CO)

CSR: 26.02.2020