

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1383 of 2013

M.Ravikumar

..

Petitioner/Appellant/
Accused

Vs.

C.M.Devendran

..

Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C., to set aside the judgment and order dated 23.01.2013 passed in C.A.No.3 of 2012 on the file of the II Additional District and Sessions Court, Erode, confirmed by the judgment and order dated 16.11.2011 passed in C.C.No.199 of 2011 on the file of the Chief Judicial Magistrate Court, Erode.

For Petitioner : Mr.S.Washimraja

Mr.M.Vignesh

For Respondent : for Mr.C.S.Saravanan

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 23.01.2013 passed in C.A.No.3 of 2012 on the file of II Additional District and Sessions Court, Erode, confirmed by the judgment and order dated 16.11.2011 passed in C.C.No.199 of 2011 on the file of the Chief Judicial Magistrate Court, Erode.

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 on 03.03.2009, the accused borrowed a sum of Rs.1,50,000/- and towards the debt, he gave a cheque dated 03.04.2009 (Ex-P1) for a sum of

Rs.1,50,000/-; the complainant presented the impugned cheque (Ex-P1) and it was returned unpaid with the endorsement "Exceeds Arrangement" on 18.04.2009 vide bank's return memo (Ex-P2); therefore, the complainant issued a statutory demand notice (Ex-P3) dated 22.04.2009, for which, the accused sent a reply notice (Ex-P6) dated 06.05.2009 repudiating the issuance of the very cheque (Ex-P1) and asking for a photocopy of the same; the complainant sent a rejoinder notice (Ex-P7) dated 18.05.2009 including a photocopy of the cheque (Ex-P1) to the accused, for which, the accused sent a reply notice (Ex-P9) dated 01.06.2009 contending that he had not taken any loan as alleged by the complainant; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.199 of 2011 before the Chief Judicial Magistrate, Erode, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

4. Before the trial Court, the complainant examined himself as PW1 and marked nine exhibits. The accused examined Vijayasekaran as DW1 and Sakthi as DW2 and marked two exhibits.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 16.11.2011 in C.C.No.199 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to six months simple imprisonment and to pay a sum of Rs.1,50,000/- as compensation to the complainant, in default to undergo one month simple imprisonment.

6. The appeal in C.A.No.3 of 2012 filed by the accused was dismissed by the II Additional District and Sessions Court, Erode, on 23.01.2013.

7. Aggrieved by the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present criminal revision invoking Section 397 r/w 401 Cr.P.C.

8. Heard Mr.S.Washimraja, learned counsel for the accused and Mr.M.Vignesh, learned counsel representing Mr.C.S.Saravanan, learned counsel on record for the complainant.

9. Before advertng to the rival submissions, it is necessary to state here 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.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

1 (2004) 7 SCC 659

"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. In the case at hand, the complainant, in his evidence, has spoken to about the loan of Rs.1,50,000/- that was given to the accused on 03.03.2009, the issuance of the impugned cheque (Ex-P1) dated 03.04.2009, its presentation and dishonour, the issuance of the statutory demand notice (Ex-P3), the receipt of the reply notice (Ex-P6), the issuance of the rejoinder notice (Ex-P7), the receipt of the reply notice (Ex-P9) to the rejoinder notice (Ex-P7) and the failure of the accused to comply with the demand.

11. The defence was not able to make any serious dent in the testimony of the complainant in the cross-examination. However, the accused examined two witnesses and took up a very peculiar defence.

12. The defence taken by the accused was that he had given the cheque (Ex-P1) as bribe to the complainant for getting a contract work from Public Works Department (P.W.D.). Both the Courts below have rightly rejected this defence, because, the accused had not taken this defence either in the reply notice (Ex-P6) to the statutory demand notice (Ex-P3) or in the reply notice (Ex-P9) to the rejoinder notice (Ex-P7), but, for the first time such a specious defence was taken during trial.

13. This Court also perused the impugned cheque (Ex-P1) and did not find any suspicious feature therein. Both the Courts below have properly appreciated the evidence of the defence witnesses and have given cogent reasons for rejecting it.

14. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability as held by the Supreme Court in Rangappa Vs. Sri Mohan³, even that has not been done in this case.

15. The complainant was an employee of P.W.D. and had

retired from service when the transaction in this case took place, and therefore, the allegation that he had received a sum of Rs.1,50,000/- by cheque (Ex-P1) as bribe defies credulity.

16. In view of the above discussion, this Court does not find any impropriety or illegality in the judgments and orders passed by the Courts below, warranting interference.

Resultantly, this criminal revision is partly allowed. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, *ibid.*, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court, who shall make it form part of the records in Crl.R.C.No.1383 of 2013. 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.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Chief Judicial Magistrate,
Erode.
 2. The II Additional District
and Sessions Judge,
Erode.
 3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.
- with a direction to return the
original records to the Courts
below concerned

4.The Principal District Judge,
Erode

+1cc to Mr.S.Washimraja, Advocate, S.R.No.13727
+1cc to Mr.C.S.Saravanan, Advocate, S.R.No.13313

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KKV/12/06/2020



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