IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.1463 of 2013
and
M.P.No.1 of 2013

Alagirisamy ... Revision Petitioner/Accused

Vs.

C.T.Sivakumar ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 17.09.2007, passed by the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore, in C.A.No.180 of 2007, confirming the judgment of conviction and sentence, dated 19.04.2007, passed by the Judicial Magistrate No.2, Pollachi, in C.C.No.46 of 2005.

For Petitioner : Mr.E.Arun Kumar
for Mr.R.C.Paul Kanagaraj

For Respondent : No appearance
(Notice served)

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 17.09.2007, passed by the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore, in C.A.No.180 of 2007, confirming the judgment of conviction and sentence, dated 19.04.2007, passed by the Judicial Magistrate No.2, Pollachi, in C.C.No.46 of 2005.

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 12.06.2002, the accused borrowed Rs.1,50,000/- from him

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and executed a promissory note (Ex.P1), agreeing to repay the same on demand with interest @ 12% p.a.; when the complainant started demanding repayment, the accused issued a cheque dated 10.07.2004 for Rs.1,50,000/- (Ex.P2) drawn on Indian Overseas Bank, Coimbatore Branch on the account of M/s.Keerthi Kalpana Hotel, for which, he was the Proprietor; the complainant presented the said cheque on 22.07.2004 in ICICI Bank, Coimbatore, and the same was returned unpaid with the endorsement "account closed" on 24.07.2004 vide return memo (Ex.P3); the complainant issued a statutory demand notice dated 04.08.2004 (Ex.P5), for which, the accused issued a reply notice dated 12.08.2004 (Ex.P7); since the accused repudiated the debt, the complainant initiated a prosecution in C.C.No.46 of 2005 before the Judicial Magistrate No.2, Pollachi, 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. From the side of the accused, one Subburam and P.S.Ramanigopal were examined as D.W.1 and D.W.3 respectively. The accused examined himself as D.W.2 and marked Exs.D1 to D6.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.04.2007, in C.C.No.46 of 2005, 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.5,000/-, in default, to undergo simple imprisonment for three months.

6.The appeal in C.A.No.180 of 2007 that was filed by the accused was dismissed by the Additional District and Sessions Judge, Coimbatore, on 17.09.2007.

7.Challenging the concurrent findings of the two Courts below, the accused filed the present Criminal Revision Case, before this Court, under Section 397 r/w. 401 Cr.P.C., with a delay of 28 days, which was condoned by this Court on 21.11.2013.

8.Notice was served on the respondent/complainant, but none has entered appearance. Hence, the name of the respondent/complainant is printed in the cause list.

9.Heard Mr.E.Arun Kumar, learned counsel for Mr.R.C.Paul Kanagaraj, learned counsel on record for the petitioner/accused.

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

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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.Learned counsel for the petitioner/accused submitted that the accused has established that he had not borrowed any money from the complainant and that he had given the promissory note (Ex.P1) and the impugned cheque (Ex.P2) to one Natrayan, who in turn, had handed over the cheque (Ex.P2) to the complainant herein for launching the present prosecution.

12.The complainant, who examined himself as P.W.1, in his evidence, has stated that the accused had borrowed Rs.1,50,000/- on 12.06.2002 and had executed a promissory note (Ex.P1); when he started demanding repayment, the accused came to his house and gave the impugned cheque (Ex.P2) dated 10.07.2004; when the cheque was presented for clearance, it was returned unpaid with the endorsement "account closed" vide return memo (Ex.P3); a statutory demand notice dated 04.08.2004 (Ex.P5) was issued to the accused, for which, the accused sent a reply notice dated 12.08.2004 (Ex.P7). In the cross-examination of the complainant (P.W.1), it was suggested to him that the accused had not availed any loan from him and that he had used the promissory note (Ex.P1) and the impugned cheque (Ex.P2) that were given by the accused to one Natrayan for filing the present case, which suggestion, he denied.

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13.Subburam (D.W.1), in his evidence, has stated that the accused joined a chit run by one Natrayan and at that time, the accused had given a promissory note and a cheque. In the cross-examination, Subburam (D.W.1) stated that he does not know when the accused had given the impugned cheque to Natrayan; he does not know when the said chit was closed; he does not know the transaction between Natrayan and the accused, since he (D.W.1) had left for Kerala in the year 2000 itself and at the request of the accused, he has come to give evidence now.

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14.The accused, who examined himself as D.W.2, admitted his signature in the promissory note (Ex.P1) and the impugned cheque (Ex.P2), but stated that, he had given them to M/s.Rajaganapathy Chit Funds that was run by one Natrayan and that, even though he had paid all dues to the said chit company, the promissory note (Ex.P1) and the blank cheque (Ex.P2) given by him have been misused by the complainant herein. In support of this assertion, the accused (D.W.2) filed Ex.D3, the account book which relates to the year 1997, whereas, the promissory note (Ex.P1) and the impugned cheque (Ex.P2) relate to the year 2002 and 2004 respectively. The accused (D.W.2), in the cross-examination, stated that after closing the Bank account on 03.03.2001, he did not hand over the unused cheque leaves to the Bank.

15.The accused did not produce any satisfactory evidence to show that the impugned cheque (Ex.P2) was issued as security to M/s.Rajaganapathy Chit Funds that was allegedly run by Natrayan. Admittedly, the accused had not taken any legal step to get back the impugned cheque (Ex.P2) from M/s.Rajaganapathy Chit Funds.

16.P.S.Ramanigopal (D.W.3), the Branch Manager of Indian Overseas Bank, where the accused was having his account, has stated that the accused had closed the account on 03.03.2001. In the cross-examination, the witness (D.W.3) stated that the impugned cheque (Ex.P2) came for clearance and it was returned on the ground "account closed" on 24.07.2004.

17.The admission of the accused that he did not return the unused cheque leaves to the Bank after his account was closed on 03.03.2001 is a powerful circumstance against him. 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.

18.In fine, this Criminal Revision Case is devoid of merits and hence, stands dismissed. Consequently, connected miscellaneous petition is closed.

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

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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.1463 of 2013.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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Copy to :

1.The Additional District and Sessions Judge,
Fast Track Court No.I,
Coimbatore.

2.The Judicial Magistrate No.2,
Pollachi.

Copy to:
The Assistant Registrar,
Criminal side,
High Court of Madras-104.

Crl. R.C. No.1463 of 2013

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