

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.1560 of 2013

V.Manickam

..Petitioner/Appellant/Accused

Vs.

M/s.Satramdas Mahesh Kumar
a partnership,
Represented by its Parter
Mahesh Kumar,
No.43-D, 1st Agraharam,
Salem - 1.

..Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the judgment and order dated 08.01.2008 passed in
C.A.No.170 of 2005 on the file of the Additional District and
Sessions Court, Salem modified by the judgment and order dated
20.10.2005 passed in C.C.No.139 of 2003 on the file of the
Judicial Magistrate Court No.IV, Salem.

For Petitioner : Mr.M.Devaraj

For Respondent : No appearance

O R D E R

This criminal revision has been filed seeking to set aside
the judgment and order dated 08.01.2008 passed in C.A.No.170 of
2005 on the file of the Additional District and Sessions Court,
Salem modified by the judgment and order dated 20.10.2005 passed
in C.C.No.139 of 2003 on the file of the Judicial Magistrate
Court No.IV, Salem.

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 had borrowed a sum of Rs.3,00,700/- on 28.10.2002 and executed a promissory note; towards the debt, the accused issued a cheque (Ex-P2) dated 31.12.2002 for a sum of Rs.70,700/- drawn on Indian Bank, Salem Branch; the complainant presented the said cheque (Ex-P2) on 02.01.2003 and the same was returned unpaid with the endorsement "Funds Insufficient" on 03.01.2003 vide bank's return memo (Ex-P3); therefore, the complainant issued a statutory demand notice (Ex-P5) dated 15.01.2003, which was received by the accused vide postal acknowledgement card (Ex-P6); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.139 of 2003 before the Judicial Magistrate No.IV, Salem, 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 six exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and did not give any explanation as to the circumstances, under which, the impugned cheque (Ex-P2) issued by him came into the hands of the complainant. From the side of the accused, no witness was examined nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.10.2005 in C.C.No.139 of 2003, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.1,41,400/- (double the cheque amount as compensation) to the complainant.

7. Challenging the above conviction and sentence, the accused preferred an appeal in C.A.No.170 of 2005 before the additional District and Sessions Court, Salem. During the pendency of the appeal, the accused paid a sum of Rs.40,000/- to the complainant and that has been recorded by the appellate Court. The appellate Court confirmed the conviction and sentence imposed by the trial Court, but reduced the compensation amount from 1,41,400/- to Rs.61,400/-, by the judgment and order dated 08.01.2008.

8. Heard Mr.M.Devaraj, learned counsel for the accused. Though notice has been served on the complainant, none has entered appearance. Hence, the name of the complainant has been printed in the cause list.

9. The learned counsel for the accused submitted that the

accused had returned the borrowed amount to the complainant and there was no legally enforceable debt. He also submitted that the cheque (Ex-P2) was given only as security and the same has been misused by the complainant.

10. Before advertng to the submissions made by the learned counsel for the accused, 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:

"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. Coming to the case at hand, the complainant, in his evidence, has stated about the loan of Rs.3,00,700/- that was given to the accused on 20.10.2002, the issuance of the impugned cheque Ex-P2) for a sum of Rs.70,700/-, its presentation and dishonour, the issuance of the statutory demand notice (Ex-P5) and the failure of the accused to comply with the demand.

12. In the cross-examination of the complainant, the accused has suggested that he had borrowed only a sum of Rs.1,00,000/- and that too has been repaid by him, which suggestion, the complainant denied.

13. As stated above, the accused has not given any explanation when he was questioned under Section 313 Cr.P.C. as to the circumstances under which, the cheque issued by him came into the hands of the complainant. Admittedly, the accused has not denied the issuance of the cheque (Ex-P2). The accused has also not issued any reply notice to the statutory demand notice (Ex-P5) issued by the complainant.

14. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability as

1(2004) 7 SCC 659

2(2019) 4 SCC 197

held by the Supreme Court in Rangappa Vs. Sri Mohan³, even that has not been done in this case.

15. In Uttam Ram Vs. Devinder Singh Hudan & Another⁴, 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 he 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."

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.

17. The learned counsel for the accused submitted that the accused has completely settled the matter with the complainant and pleaded for lenience in the sentence. Even though, no material has been produced in support of his assertion, interests of justice will be served if the substantive sentence of one year rigorous imprisonment for the offence under Section 138 of the NI Act is reduced to six months rigorous imprisonment and it is ordered accordingly.

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.1560 of 2013. If any amount has been deposited by the accused either in the appellate Court or in the

³ (2010) 11 SCC 441

⁴ Crl.A.No.1545 of 2019 decided on 17.10.2019

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

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Judicial Magistrate No.IV,
Salem.
- 2.The Additional District
and Sessions Judge,
Salem.
- 3.The Deputy Registrar,
(Crl.Side) with a direction to return the
original records to the Courts
Madras High Court, below concerned
Chennai - 104.
- 4.The Principal District Judge,
Salem(For Information).
- 5.The Chief Judicial Magistrate,
Salem(For Information).

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NRJK (CO)
GS (05/06/2020)