

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.R.C.NO.1570 OF 2013

1. M/s.D.Sudhakar Enterprises,
Represented by its Proprietor,
Dillibabu,
S/o.C.N.Kalliappan Naidu,
No.59,West Madha Street,
Thiruvottiyur,
Chennai - 600 019.
 2. Dillibabu .. Petitioners/Appellants/
Accused
- Vs.
- K.Mallikarjuna Rao .. Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment dated 23.08.2007, passed in C.A.No.180 of 2006 on the file of the 2nd Additional Sessions Judge at Chennai confirming the order passed in C.C.No.3386 of 1998, dated 01.12.2004 on the file the 5th Metropolitan Magistrate Court, Egmore.

For Petitioners : Mr.R.Karunakaran

For Respondent : M/s.P.Sanjaygandhi

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 01.12.2004 passed in C.C.No.3386 of 1998 on the file of the V Metropolitan Magistrate Court, Egmore, confirmed by the judgment and order dated 23.08.2007 passed in C.A.No.180 of 2006 on the file of the II Additional Sessions Court, Chennai.

2. For the sake of convenience, the second 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.2,50,000/-; in discharge of the debt, the accused issued a cheque (Ex-P2) dated 15.11.1997 for the said sum; the impugned cheque (Ex-P2) has been issued from the account of Sudhakar Enterprises (A1) signed by its Proprietor Dillibabu (A2); the complainant presented the said cheque (Ex-P2) and the same was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P3); therefore, the complainant issued a statutory demand notice (Ex-P4), which was received by the accused vide postal acknowledgement card (Ex-P5); the complainant also issued a telegram to the accused, which was marked as Ex-P6; since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.3386 of 1998 before the V Metropolitan Magistrate, Egmore, Chennai, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

4. The complainant Mallikarjuna Rao gave power of attorney to one Ramanaiya. Before the trial Court, the complainant examined Ramanaiya - PW1, Valmikinathan, Branch Manager of Indian Bank - PW2 and Malligeshwaran - PW3 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. The accused examined himself as DW1 and also examined Swamy and Sathyanarayanan as DW2 and DW3, respectively. However, he did not mark any exhibit.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 01.12.2004 in C.C.No.3386 of 1998, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to six months simple imprisonment and was directed to pay a sum of Rs.2,50,000/- as compensation to the complainant, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.180 of 2006 filed by the accused was dismissed by the II Additional Sessions Court, Chennai, on 23.08.2007.

8. Challenging the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present criminal revision under Section 307 r/w 401 Cr.P.C.

9. Heard Mr.R.Karunagaran, learned counsel for the accused and Mr.P.Sanjaygandhi, learned counsel for the complainant.

10. It is submitted by the learned counsel for the accused that the accused has died. However, he did not produce the death certificate. In the absence of production of the death certificate, this Court cannot proceed with this case on the footing that the accused has died.

11. 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:

"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)

12. The learned counsel for the accused submitted that both the Courts below have failed to appreciate the evidence of the defence witnesses in the proper perspective. He also submitted that, out of Rs.2,50,000/-, the accused has so far paid a sum of Rs.1,50,000/- to the complainant. The learned counsel for the complainant also conceded the submission made by the learned counsel for the accused.

13. This Court perused the evidence of the accused, who categorically admitted that he had issued the impugned cheque (Ex-P2). He also admitted that he did not issue any reply notice to the statutory demand notice (Ex-P4) sent by the complainant. It is the defence of the accused that he did not have any financial transaction with the complainant and he had issued the impugned cheque (Ex-P2) to Ramanaiya (PW1), with whom, he has had some business transactions. It is his further defence that Mallikarjuna Rao and Ramanaiya (PW1) had conspired to initiate the present prosecution.

14. Swamy (DW2) and Sathyanarayanan (DW3) have admitted in their cross-examination that they did not know anything about

1(2004) 7 SCC 659

2(2019) 4 SCC 197

transaction between the accused and the complainant. Except suggesting to Ramanaiya (PW1) the defence case, the accused had failed to bring on record credible materials to probabalize his defence.

15. 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.

16. Admittedly, out of Rs.2,50,000/-, Rs.1,50,000/- has been paid by the accused, therefore, the compensation amount awarded by the trial Court is reduced from Rs.2,50,000/- to Rs.1,00,000/-. Except modifying the compensation amount awarded by the trial Court, the rest of the findings of the trial Court and the appellate Court are confirmed.

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.1570 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 V Metropolitan Magistrate,
Egmore.

2. The II Additional Sessions Judge,
Chennai.

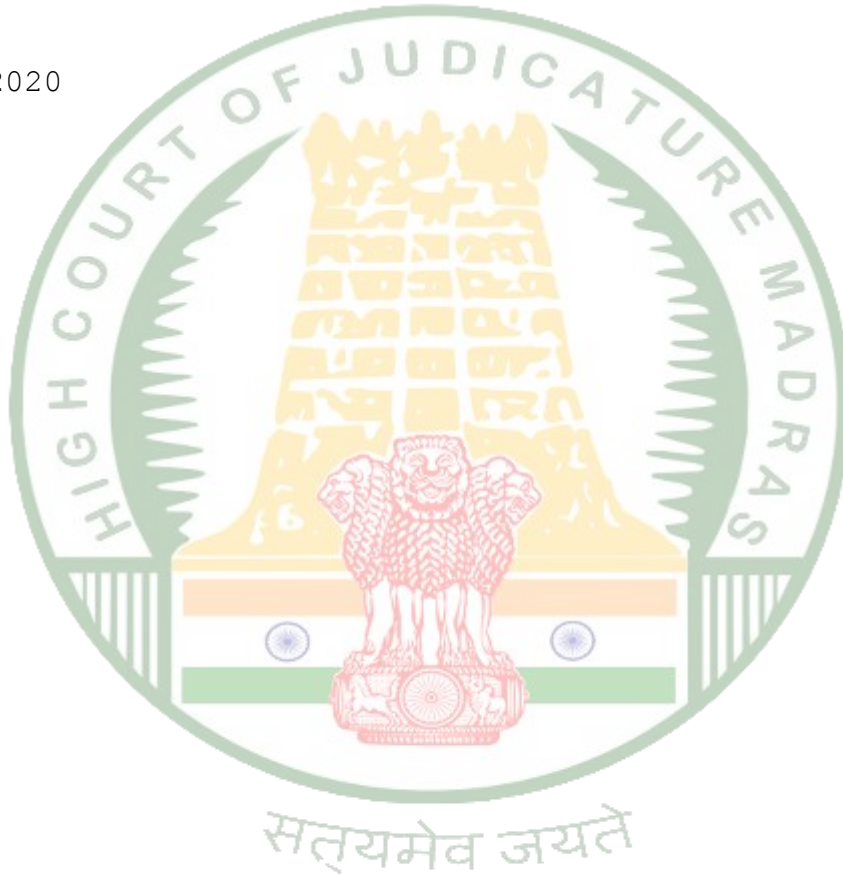
3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return the
original records to the Courts
below concerned

+lcc to M/s.P.Sanjaygandhi, Advocate, S.R.No.11069

Crl.R.C.No.1570 of 2013

SS (CO)
CS/29/05/2020



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