

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.917 of 2013

N.Subbaiyan
S/o B.Nanjaiyan

..Petitioner/Appellant/Accused

Vs.

D.K.Manoharan
S/o. Krishna Chettiar

... Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 13.12.2012 passed in S.T.C.No.164 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 18.04.2013 passed in C.A.No.9 of 2013 on the file of the I Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.S.N.Arunkumar
for Mr.C.Ramkumar

For Respondent : Mr.R.Babu

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 13.12.2012 passed in S.T.C.No.164 of 2012 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 18.04.2013 passed in C.A.No.9 of 2013 on the file of the I Additional District and Sessions Court, Coimbatore.

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 05.09.2008, the accused borrowed a sum of Rs.2,50,000/- as hand loan; on the

same day, the accused issued a post dated cheque (Ex-P1) dated 05.11.2008 bearing no.126127 for a sum of Rs.2,50,000/- drawn on the Syndicate Bank, Mettupalayam Branch; the complainant presented the impugned cheque (Ex-P1) in Karur Vysya Bank, where he was having an account, but, the cheque (Ex-P1) was dishonoured with the endorsement "Insufficient Funds" vide bank's return memo (Ex-P2) dated 06.11.2008; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 18.11.2008, which was received by the accused vide postal acknowledgement card (Ex-P5); the accused issued a reply notice (Ex-P6) dated 13.12.2008 repudiating the debt; hence, the complainant initiated a prosecution in S.T.C.No.413 of 2009 before the Judicial Magistrate No.VII, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused. On transfer of the case from the file of the Judicial Magistrate Court No.VII, Coimbatore to the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, it was re-numbered as S.T.C.No.164 of 2012.

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 cheque (Ex-P1) executed by him came into the hands of the complainant. Before the trial Court, the accused examined himself as DW2 and one Sathyaseelan, Branch Manager of Syndicate Bank as DW1 and marked four exhibits.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 13.12.2012 in S.T.C.No.164 of 2012, 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 fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

7. The appeal in C.A.No.9 of 2013 filed by the accused was dismissed by the I Additional District and Sessions Court, Coimbatore, on 18.04.2013.

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

9. Heard Mr.S.N.Arunkumar, learned counsel representing Mr.C.Ramkumar, learned counsel on record for the accused and

Mr.R.Babu, learned counsel for the complainant.

10. Before adverting 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)

11. In the instant case, the accused has not denied his signature in the impugned cheque (Ex-P1). It is his defence that, he had handed over the impugned cheque (Ex-P1) to his wife to be given to a relative, which, she lost in the bus stand on 02.09.2008. It is his further defence that he had sent a letter dated 03.09.2008 (Ex-D2) by courier to the Syndicate Bank for "Stop Payment" and also sent a complaint to the police by courier. However, Sathyaseelan (DW1), Manager of Syndicate Bank, where, the accused was having his account, has stated that the accused is a customer of the bank, but the bank has not received any communication from him for "Stop Payment" on the impugned cheque (Ex-P1).

12. The evidence on record shows that the complainant was not a stranger to the accused, since both of them were working in the Transport Department in Mettupalayam Branch. Except the ipse dixit of the accused that his wife had lost the impugned cheque (X-P1) on 02.09.2008 in the bus stand and the complainant has misused the cheque (Ex-P1), there is no satisfactory evidence to prove these facts.

13. It may be relevant to state here that the impugned cheque (Ex-P1) was presented by the complainant only on 05.11.2008 and it was not dishonoured on the ground "Payment Stopped", but, on the ground "Funds Insufficient".

1(2004) 7 SCC 659

2(2019) 4 SCC 197

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. In view of the foregoing discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. 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.917 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

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
(Fast Track Court No.II),
Coimbatore.

2. The I Additional District
and Sessions Judge,
Coimbatore.

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

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

³ (2010) 11 SCC 441

+1cc to Mr.B.Vijayakumar, Advocate SR.3858
+1cc to Mr.C.Ramkumar, Advocate SR.4418

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VBA (CO)
CB (28/02/2020)



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