

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.994 of 2013

D.Saravana Prabu

... Revision Petitioner/
Appellant/Accused

Vs.

S.Sathish Kumar

... Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 14.06.2013, passed by the Principal District and Sessions Judge, Dharmapuri, in C.A.No.23 of 2012, confirming the judgment of conviction and sentence, dated 31.07.2012, passed by the Judicial Magistrate, Fast Track Court, Dharmapuri, in S.T.C.No.102 of 2011.

For Petitioner : Mr.KSL.Narain

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 14.06.2013, passed by the Principal District and Sessions Judge, Dharmapuri, in C.A.No.23 of 2012, confirming the judgment of conviction and sentence, dated 31.07.2012, passed by the Judicial Magistrate, Fast Track Court, Dharmapuri, in S.T.C.No.102 of 2011.

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 he has an oil mill; the accused purchased oil from him, towards which, a sum of Rs.2,43,115/- was due; towards the said debt, the accused gave a cheque dated 12.11.2008 (Ex.P1) drawn on Indus Ind Bank; the complainant presented the said cheque and it was returned with an endorsement "insufficient funds" on 23.12.2008 vide return memo (Ex.P2); the complainant issued a statutory demand notice dated 03.01.2009 (Ex.P3) which was sent by RPAD (Ex.P4) and certificate of postal authority

(Ex.P5); the accused did not comply with the demand, hence, the complainant initiated prosecution in S.T.C.No.79 of 2009, for the offence under Section 138 of the Negotiable Instruments Act, against the accused, before the Judicial Magistrate No.1, Dharmapuri, and on transfer to the Court of Judicial Magistrate, Fast Track Court, Dharmapuri, the case was renumbered as S.T.C.No.102 of 2011.

4.The complainant examined himself as P.W.1 and marked Exs.P1 to P5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he did not offer any explanation as to the circumstances, under which, the impugned cheque was given to the complainant. No witness was examined nor any document marked on the side of the accused.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 31.07.2012, in S.T.C.No.102 of 2011, convicted the accused and sentenced him to undergo simple imprisonment for one year and pay fine of Rs.5,000/- in default to undergo simple imprisonment for three months.

6.The appeal in C.A.No.23 of 2012 that was filed by the accused was dismissed by the Principal District and Sessions Judge, Dharmapuri, on 14.06.2013.

7.Aggrieved by the concurrent findings of the two Courts below, the accused has filed the present Criminal Revision Case before this Court under Section 397 r/w. 401 Cr.P.C.

8.Heard learned counsel for the petitioner/accused.

9.Though notice was served on the complainant/respondent, he has not entered appearance and hence, his name was printed in the cause list.

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 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.The complainant examined himself as P.W.1 and has stated about, the purchase of oil by the accused; issuance of the impugned cheque; its presentation and dishonour; issuance of demand notice and non-compliance with the demand by the accused.

12.In the cross-examination, the accused has not denied his signature in the impugned cheque and has taken a stand that the impugned cheque was issued as security, which the complainant has misused.

13.The learned counsel for the accused brought to the notice of this Court, a stray answer given by the complainant in the cross-examination that he had received a notice from the accused in the year 2008 demanding the return of cheque and submitted that the impugned cheque was given as security. He also submitted that the complainant had filed another prosecution against the accused in respect of another cheque that was given in the name of "M/s.Dhanush Traders" in S.T.C.No.92 of 2011 and that was dismissed and therefore, the present prosecution should also be dismissed.

14.This Court carefully perused the evidence of the complainant (P.W.1). It was suggested to the complainant that, in the year 2007, the accused had issued a lawyer's notice demanding return of cheque, for which, the complainant has stated that, such a notice was issued only in the year 2008. The accused did not confront the complainant with a copy of the notice nor did the accused file a copy of it along with the statement under Section 313 Cr.P.C. There is absolutely no evidence on record about the correct averments of the notice. It is pertinent to note that the accused did not send any reply notice to the statutory demand notice nor did issue directions to his Bank to stop payment. The accused, in the cross-examination of the complainant, has suggested that, he (accused) was having business dealings with the complainant and they had some misunderstanding, on account of which, the complainant has filed the present case, which suggestion, the complainant has denied. Similarly, there is no shred of legal evidence to show that the prosecution in S.T.C.No.92 of 2011 filed by M/s.Dhanush Traders was dismissed by the trial Court.

15.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. In fine, this Court does not find any infirmity in the concurrent findings of the Courts below, warranting

interference.

16. In the result, this Criminal Revision Case is dismissed and the judgments of the two Courts below are confirmed. The trial Court is directed to secure the accused and commit him to prison to undergo the sentence imposed on him.

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 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.994 of 2013.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

Copy to :

1. The Principal District and Sessions Judge,
Dharmapuri..

2. The Judicial Magistrate,
Fast Track Court,
Dharmapuri.

3. The Deputy Registrar | with a direction to send back
(Criminal Section), | the original records to the
High Court, Madras. | respective Courts below

4. The Assistant Registrar,
Criminal Section,
High Court, Madras-104.

+2cc to Mr.KSL,Narain, Advocate SR.1217

Crl. R.C. No.994 of 2013

SVI (CO)
CB(13/02/2020)