

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2020

PRONOUNCED ON : 19.11.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1282 of 2019
and CRL.M.P.Nos.1202 of 2019 & 1546 of 2020

1.Ravi Prabhakar

2.M/s.Dhanishka
Rep. by its Managing Partner
Ravi Prabhakar
No.16, Flat No.4-A, 1st Avenue
Indira Nagar, Adyar
Chennai 600 020

3.Isha Ravi
No.16, Flat No.4-A, 1st Avenue
Indira Nagar, Adyar
Chennai 600 020

.. Petitioners/Accused

P.A.Joykutty

Vs.

.. Respondent/Complainant

Criminal Revision preferred under Sections 397 and 401 read with Section 482 Cr.P.C. to set aside the judgment and order dated 27.08.2019 passed by the Principal Sessions Judge, Tiruvallur in C.A.No.21 of 2018 confirming the judgment and order dated 04.01.2018 passed by the Judicial Magistrate, FTC (Magisterial Level), Ambattur in S.T.C.No.273 of 2016

For Petitioners : Mr.A.S.Baalaji

For Respondent : Mr.V.P.Sengottuvel

ORDER

This matter is taken up for hearing *via* video conferencing.

2. This Criminal Revision has been preferred challenging the judgment and order dated 27.08.2019 passed by the Principal Sessions Judge, Tiruvallur in C.A.No.21 of 2018 confirming the judgment and order dated 04.01.2018 passed by the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur in S.T.C.No.273 of 2016.

3. For the sake of convenience, the parties are referred to by their names.

4. Joykutty (complainant) was the owner of a land measuring 1 acre and 66 cents in Vengadamangalam village. M/s.Dhanishka (A1) is a partnership firm, in which, Ravi Prabhakar (A2) is the Managing Partner and his wife, Isha Ravi (A3) is the other partner.

4.1. M/s.Dhanishka (A1) is in the business of land development and apartments construction. Joy Kutty entered into a development agreement dated 03.02.2010 (Ex.P1) with M/s.Dhanishka (A1) and also executed a Power of Attorney on 11.02.2010, whereby, giving 60% of undivided share and the proportionate built up area to M/s.Dhanishka (A1), retaining the balance 40% with him.

4.2. Under the terms of the agreement, M/s.Dhanishka (A1) marketed the project and collected Rs.50,00,000/- from eight parties towards Joy Kutty's share, but, did not credit it into his account. When Joy Kutty approached the accused, they issued a letter dated 20.02.2014 (Ex.P2), agreeing to give Rs.50,00,000/- to Joy Kutty and also enclosing two cheques dated 20.03.2014 for Rs.25,00,000/- (Ex.P3) and 06.04.2014 for Rs.25,00,000/- (Ex.P4).

4.3. However, the accused requested Joy Kutty not to present the cheques, until they instruct him and accordingly, the accused gave a letter dated 06.05.2014 (Ex.P5) asking Joy Kutty to present the cheques after 22.05.2014. Joy Kutty presented the cheques, but, they were returned on 23.05.2014 with the endorsement 'funds insufficient' *vide* return memo (Ex.P6 Series).

4.4. Joy Kutty issued a statutory demand notice dated 05.06.2014 (Ex.P7), which was received by the accused and they issued a reply notice dated 21.06.2014 (Ex.P8), generally denying the transaction. Therefore, Joy Kutty initiated a prosecution in S.T.C.No.273 of 2016 in the Court of the Judicial Magistrate, Magisterial Level, Ambattur under Section 138 of the Negotiable Instruments Act, 1881 (for brevity “the NI Act”), against M/s.Dhanishka (A1), Ravi Prabhakar (A2) and Isha Ravi (A3).

5. From the side of the complainant, two witnesses viz. Joy Kutty (P.W.1) and Magesh Balakrishnan (P.W.2) were examined and Exs.P1 to P15 were marked. In the cross-examination, the accused marked two exhibits viz. an agreement (Ex.D1) and a Power of Attorney (Ex.D2). No witness was examined from the side of the accused.

6. When the accused were questioned under Section 313 Cr.P.C., they denied the incriminating circumstances appearing against them.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.01.2018 in S.T.C.No.273 of 2016, convicted M/s.Dhanishka (A1) and Ravi Prabhakar (A2), but, acquitted Isha Ravi (A3) on the ground that there was no evidence to show that she was actively participating in the affairs of M/s.Dhanishka (A1). However, M/s.Dhanishka (A1) being a juristic person, the trial Court directed M/s.Dhanishka (A1), Ravi Prabhakar (A2) and Isha Ravi (A3) to pay compensation of Rs.50,00,000/- being the cheque amount to the complainant within three months, with a further direction that Ravi Prabhakar (A2) and Isha Ravi (A3) would have to undergo one month simple imprisonment in default of payment of the compensation. Ravi Prabhakar (A2) was convicted of the offence under Section 138 of the NI Act and was sentenced to undergo eight months simple imprisonment. The appeal in C.A.No.21 of 2018 that was filed by M/s.Dhanishka (A1), Ravi Prabhakar (A2) and Isha Ravi (A3) was heard and dismissed by the Principal Sessions Court, Tiruvallur on 27.08.2019. Aggrieved by the concurrent findings of the two Courts below, the accused have preferred the present Criminal Revision under Section 397 read with 401 Cr.P.C.

8. Heard Mr.A.S.Baalaji, learned counsel for the petitioners/accused and Mr.V.P.Sengottuvel, learned counsel for the respondent/complainant.

9. Before advertng to the rival submissions, it is necessary to state 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)

10. Mr.A.S.Baalaji, learned counsel for the accused contended that, the complainant had filed a suit in O.S.No.3782 of 2014 for the recovery of the amount, without invoking the arbitration clause in the joint development agreement and therefore, the complainant had come to Court

with unclean hands. He also contended that a sum of Rs.1,25,00,000/- was given as caution deposit, which has not been accounted for. He further contended that the complainant had to pay Rs.55,00,000/- as bonus amount to the accused, which was not paid.

11. Per contra, learned counsel for the complainant refuted the aforesaid contentions.

12. In this case, there is no dispute that the complainant and the accused had entered into a joint development agreement dated 03.02.2010 (Ex.P1) under which, 60% was allotted to the accused and the balance 40% was retained by the complainant. The case of the complainant is that the accused sold eight flats that fell within the 40% share of the complainant, collected Rs.50,00,000/- from the buyers and in stead of crediting the amount into the complainant's account, the accused credited it into their account.

13. This is crystal clear from the averments in Ex.P2, which is the letter dated 20.02.2014, that was issued by the accused to the complainant enclosing the two impugned cheques. It may be apposite to

extract the relevant averments in Ex.P2 :

“As we already informed vide our letter dated 16.7.2013, we collected some payment from the allottees of your share and the amount was by mistake credited to our account in stead of paying to you. Now we are returning part of the payments we already collected as per the details given below :

Sl.No.	Flat No.	Allottee Name	Amount
1.	12	S.Jayakumar	5,14,447
2.	25	S.Prasad/S.Shajuna Banu	3,20,046
3.	27	Ram Mohan	2,69,950
4.	56	Vijesh Sundaram	98,350
5.	67	L.Suresh & Lachmandas	20,45,220
6.	71	S.Sudharsan	7,42,152
7.	75	Srinivasan	6,22,600
8.	4	Mariya Rosario Bruneo	3,87,235
Total			50,00,000

Our cheque No.002214 dated 25.3.2014 for Rs.25,00,000/- drawn on Lakshmi Vilas Bank and Cheque No.002216 dated 6.4.2014 for Rs.25,00,000/- drawn on Lakshmi Vilas Bank favouring you are enclosed which will be honoured positively. The balance payment also will be arranged at the time of handing over of keys to the individual allottees.

So kindly handover the keys to the allottees through us so that they can occupy the flats.”

(emphasis supplied)

This letter (Ex.P2) was followed by another letter Ex.P5 dated 06.05.2014, the relevant portion of which, reads as under :

“This is to inform that the cheques which has been given to you can be presented after 22nd May 2014. Cheque details below mentioned:

- 1.Cheque No.002214 dated 25.03.2014
Rs.25,00,000/- drawn on LVB*
- 2.Cheque No.002216 dated 06.04.2014
Rs.25,00,000/- drawn on LVB.”*

14. Only after the receipt of Ex.P5 letter, the complainant presented the cheques and they were dishonoured. Under Section 139 of the NI Act, the burden is on the accused to discharge the presumption that the cheques were issued in discharge of a liability. Just because, there is an arbitration clause in the joint development agreement and that was not disclosed in the civil Court, the accused cannot be acquitted as contended by the learned counsel.

15. That apart, there is absolutely no material was placed by the accused before the trial Court to show that Rs.1,25,00,000/- was kept as caution deposit. The accused has unequivocally admitted in Ex.P2 that they had collected Rs.50,00,000/- from eight purchasers in respect of 40% share of the complainant. There is an element of cheating in this

transaction by the accused, inasmuch as they have sold the complainant's share and appropriated the monies to themselves, without his knowledge. Though the burden under Section 139 of the NI Act can be discharged by the accused by preponderance of probability as held by the Supreme Court in *Rangappa Vs Sri Mohan [(2010) 11 SCC 441]*, even that has not been done in this case. Therefore, this Court does not find any infirmity or illegality in the findings of fact arrived at by the two Courts below, warranting interference.

In the result, this Criminal Revision is dismissed as being devoid of merits. Connected Miscellaneous Petitions are closed. The trial Court is directed to secure the accused to undergo the remaining period of sentence, if any. 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 NI 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.1282 of 2019.

The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

19.11.2020

gya

To

1.The Principal Sessions Judge
Tiruvallur

2.The Judicial Magistrate
FTC (Magisterial Level)
Ambattur

3.The Deputy Registrar
Criminal Section
High Court, Madras

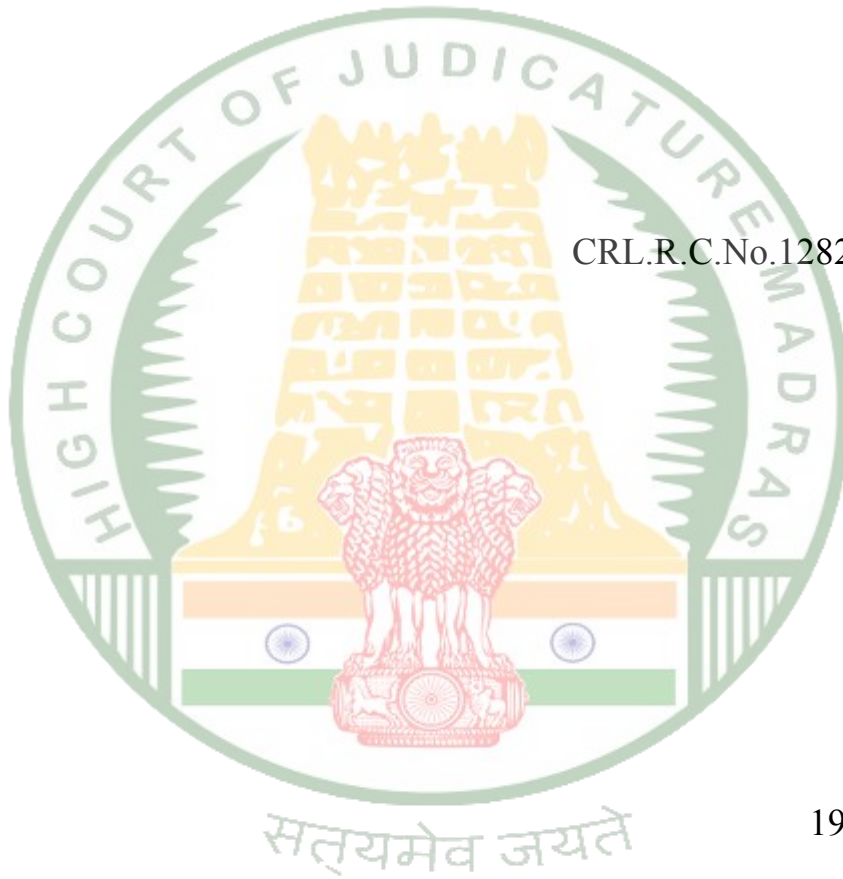


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P.N.PRAKASH, J.

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