

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.M.P. No.2863 of 2021 in Crl.R.C. No.1172 of 2013

O. Achuthan

Petitioner

VS.

M. Manoharan

Respondent

Criminal Miscellaneous Petition filed under Section 147 of the Negotiable Instruments Act to compound the offence by recording the memo of compromise dated 02.02.2021 as directed in the order dated 04.11.2019 in Crl.R.C. No.1172 of 2013 and consequently, release the petitioner from the prison.

For petitioner

Mr. S. Giritharan

for Mr. R. Bhagawat Krishna

For respondent

Ms. J. Jothi

for Mr. J. Nandagopal

ORDER

This case is taken up through video conferencing.

2 On 04.11.2019, this Court dismissed Crl.R.C. No.1172 of 2013 by passing the following order:

“This criminal revision is directed against the judgment and order dated 04.09.2013 passed by the District and Sessions Court, Tiruvarur in Crl.A.No.24 of 2012, confirming the judgment and order

dated 22.10.2012 passed by the Judicial Magistrate Court, Tiruvarur in S.T.C. No.429 of 2008.

2 For the sake of convenience, the petitioner and the respondent are referred to as accused and complainant respectively.

3 The facts in brief are as under:

3.1 It is the case of the complainant that he is a friend of the accused and the accused borrowed a sum of Rs.4,50,000/- for meeting some urgent family expenses, towards discharge of which liability, he issued a cheque dated 10.08.2007 (Ex.P.1); when the complainant presented the cheque (Ex.P.1), it was returned unpaid with the endorsement "funds insufficient" vide bank return memo (Ex.Ps.2 and 3); the complainant issued a statutory demand notice dated 11.08.2007 (Ex.P.4), which was received by the accused on 13.08.2007 vide Acknowledgment Due card (Ex.P.5); the accused issued a reply notice dated 08.09.2007 (Ex.P.6) repudiating the debt; hence, the complainant initiated a prosecution in S.T.C. No.429 of 2008 before the Judicial Magistrate, Thiruvavur under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against the accused.

3.2 The complainant examined himself as P.W.1 and marked Exs.P.1 to P.6.

3.3 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as D.W.1 and did not mark any exhibit.

3.4 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 22.10.2012 in S.T.C. No.429 of 2008, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

3.5 The appeal in Crl.A.No.24 of 2012 preferred by the accused thereagainst was dismissed by the District and Sessions Court, Tiruvarur on 04.09.2013.

3.6 Calling into question the legality and validity of the concurrent findings of the two Courts below, the accused has preferred this criminal revision invoking Section 397 r/w Section 401 Cr.P.C.

4 Heard Mr. T. Muruganantham, learned counsel for the accused and Mr.J. Nandagopal, learned counsel for the complainant.

5 The learned counsel for the accused submitted that the accused has discharged the burden under Section 139 of the NI Act by issuing the reply notice dated 08.09.2007 (Ex.P.6) and also by examining himself as D.W.1.

6 Per contra, the learned counsel for the complainant refuted the contention put forth by the learned counsel for the accused.

7 Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in *State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc.* [(2004)7 SCC 659]

“22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. (emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

8 The aforesaid legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* (2019) 4 SCC 197, wherein, the following question of law was formulated:

“(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law“

9 The answer of the Supreme Court to the aforesaid question is as under :

“19. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20. As held by this Court in *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. The answer to the first question is therefore, in the negative.“

10 Coming to the case at hand, the complainant, in his evidence, has stated about the loan of Rs.4.50 lakhs borrowed by the accused, issuance of the impugned cheque (Ex.P.1) for the said amount, dishonour of it, issuance of the statutory demand notice (Ex.P.4) to the accused and the reply notice (Ex.P.6) given by the accused. In the reply notice (Ex.P.6), the accused has stated that he had borrowed a sum of Rs.2,25,000/- from the complainant for the marriage of his daughter and that he had given a blank, but, signed cheque as security and that the said cheque has been misused by the complainant to launch the present prosecution. However, the accused who examined himself as D.W.1, has stated in his evidence that he gave a cheque for Rs.50,000/- to the complainant and that the complainant has added “4” in numerals before the amount in figures i.e., 50,000/- and has initiated the present prosecution. Thus, this Court can perceive the fluctuating stand taken by the accused in the reply notice (Ex.P.6) and in his testimony.

11 Further, a perusal of the impugned cheque (Ex.P.1) shows that there is no interpolation or distortion therein. The amount of Rs.4,50,000/- has been filled up in words as well in figures in such a manner leaving no room for suspicion. In the reply notice (Ex.P.6), the accused has stated that he had given a blank cheque, whereas, in the evidence, he has stated that he gave a cheque for Rs.50,000/-, which was manipulated as Rs.4,50,000/- by the complainant. Though the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability, the accused, by adducing conflicting defence, has not probabalised his assertion that the cheque was not issued for settling the loan of Rs.4,50 000/- availed by him.

12 In view of the foregoing discussion, this Court does not find any reason to interfere with the well merited judgments and orders of the Courts below convicting the accused of the charge under Section 138 of the NI Act and sentencing him to undergo six months simple imprisonment and pay a fine of Rs.5,000/, in default to undergo one month simple imprisonment.

In the upshot, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the presence of the accused and commit him to prison for undergoing the period of sentence. Liberty is given to the accused to approach this Court for compounding the offence under Section 147 of the NI Act, even after he is taken into custody. 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.”

3 It appears that the petitioner surrendered to judicial custody on 29.12.2020 and was lodged in the Central Prison, Trichy, for undergoing the sentence. Thereafter, on the intervention of the petitioner's family members, the matter appears to have been compounded with the respondent/complainant.

4 The respondent/complainant has filed an affidavit dated 03.02.2021, wherein, at paragraph 5, he has stated as follows:

“5. I submit that thereafter the revision petition herein approached me for settlement and later, the revision petitioner herein paid the entire cheque amount of Rs.4,50,000/- along with interest of 2% p.a., on 02.02.2021. In the meantime, the revision petition is surrendered before the trial Court on 29.12.2020 to undergo the imprisonment as such he is in judicial custody from 29.12.2020. In view of the settlement made between me and the revision petitioner, the entire issues between us has been settled out of Court. Hence, I am swearing this affidavit to state I am having no objection if the remaining sentence for the revision petitioner has been set aside with immediate effect.”

5 In view of the above, the matter stands compounded under Section 147 of the Negotiable Instruments Act and the conviction and sentence imposed on the petitioner by the trial Court in S.T.C. No.429 of 2008 on 22.10.2012 as confirmed by the appellate Court in Crl.A. No.24 of 2012 on

04.09.2013 and further confirmed by this Court in Crl.R.C. No.1172 of 2013 on 04.11.2019, are hereby set aside and the petitioner is acquitted of the offence under Section 138 of the Negotiable Instruments Act. As a sequel, the petitioner shall be released from custody, provided he is not required in connection with any other case.

This criminal miscellaneous petition stands ordered accordingly.

10.03.2021

cad

Note to Office: Issue order copy by 11.03.2021

To:

- 1 The Judicial Magistrate
Tiruvarur
- 2 The District & Sessions Judge
Tiruvarur
- 3 The Superintendent of Prison
Central Prison
Trichy
- 4 The Public Prosecutor
Madras High Court
Chennai – 600 104

P.N. PRAKASH, J.

cad



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