IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.RC.Nos.1275, 1277, 1278 and 1279 of 2017
and
Crl.MP.Nos.14714, 14715, 14716 & 14717 of 2017

P.Devaraj ... Petitioner/Appellant/Accused in all Criminal Revisions.

Versus

K.Kuppusamy ... Respondent/respondent/Complainant in all Criminal Revisions.

Criminal Revisions have been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the conviction imposed in the judgment dated 08.09.2017 made in C.A.Nos.112,114,115 & 113 of 2017 on the file of the learned Additional Sessions Court Magalir Neethi Mandram (Fast Track Mahila Court) Erode confirming judgment dated 05.05.2017 made in S.T.C.Nos.14, 13, 234 & 235 of 2016 on the file of the learned Judicial Magistrate Fast Track Court No.1 Erode by allowing this Criminal Revision Petition.

In all cases:

For Revision Petitioner	:	Mr. N.Manoharan
For Respondent	:	Mr.V.Karthick, Senior Counsel for Mr.P.Navaneethakrishnan

COMMON ORDER

These Criminal Revision Petitions have been preferred to challenge the judgment dated 08.09.2017 made in C.A.Nos.112,114,115 & 113 of 2017 on the file of the learned Additional Sessions Court Magalir Neethi Mandram (Fast Track Mahila Court) Erode confirming judgment dated 05.05.2017 made in S.T.C.Nos.14, 13, 234 & 235 of 2016 on the file of the learned Judicial Magistrate Fast Track Court No.1 Erode.

2.The petitioner in each revision petition is arrayed as an accused in each of the four complaints for dishonour of cheque filed by the same complainant**.**

3.The facts with regard to the complaint in S.T.C.No.14/2016 in brief:

(i)As per the allegation made in the complaint, the accused had borrowed a sum of Rs.3,75,000/- as loan from the complainant for his business purpose and towards discharge of the same he had issued two post dated cheques as under:

sl.no	Date	Bank	Cheque No.	Amount
1	10.02.2010	Indian Bank, Chennimalai	366652	Rs.3,00,000/-
2	11.02.2010	Indian Bank, Chennimalai	366654	Rs.75,000.00

(ii) On 1.10.2009 the accused had borrowed another sum of Rs. 5 lakhs as loan and towards discharge of the same he had issued two post dated cheques as under:

sl.no	Date	Bank	Cheque No.	Amount
1	25.03.2010	Indian Bank, Chennimalai	202902	Rs.2,50,000/-
2	26.03.2010	Indian Bank, Chennimalai	202903	Rs.2,50,000/-

(iii)At the request of the accused, the complainant presented all the four cheques for encashment on 27/05/2010 and they were returned on 29/05/2010 as' payments stopped by the drawer'. The complainant issued a legal notice and after complying the legal mandates he filed the complaint for the offence under Section 138 of the Negotiable Instruments Act-1881.

3.1.The facts with regard to the complaint in S.T.C.No.13/2016 in brief:

(i)On 13/10/2019 the accused borrowed a sum of Rs. 3 lakhs and on 3/11/2019 he borrowed another sum of Rs.2 lakhs as loan for his business purpose from the complainant and towards discharge of the same the accused had issued the following cheques:

sl.no	Date	Bank	Cheque No.	Amount
1	27.03.2010	Indian Bank, Chennimalai	202921	150000
2	29.03.2010	Indian Bank, Chennimalai	202922	150000
3	30.03.2010	Indian Bank, Chennimalai	202969	100000
4	31.03.2010	Indian Bank, Chennimalai	202972	100000

(ii) The cheques were presented for collection on 25/7/2010 and it was dishonored as 'payment stopped by the drawer'. The complainant issued a legal notice and after complying the legal mandates he filed the complaint for the offence under section 138 of NI Act.

3.2.The facts with regard to the complaint in S.T.C.No.234/2016 in brief:

(i)On 14/8/2009 accused had borrowed a sum of Rs.5,00,000/- and on 20.08.2009 Rs.13,50,000/- as loan for his business purpose from the complainant and towards discharge of the same that accused issued the following three cheques:

sl.no	Date	Bank	Cheque No.	Amount
1	04.02.2010	Indian Bank, Chennimalai	366312	5,00,000/-
2	05.02.2010	Indian Bank, Chennimalai	366313	5,00,000/-
3	08.02.2010	Indian Bank, Chennimalai	366314	5,00,000/-
4	09.02.2010	Indian Bank, Chennimalai	266319	3,50,000/-

(ii) The cheques were presented for collection on 27/5/2010 and it was returned on 29/5/2010 as payment stopped by drawer. The complainant issued a legal notice and after complying the legal mandates he filed the complaint for the offence under section 138 of NI Act.

3.3.The facts with regard to the complaint in S.T.C.No.235/2016 in brief:

(i)On 05.08.2009 the accused borrowed a sum of Rs.9,50,000/- for his business purpose and towards discharge of the same he had issued 5 post dated cheques as under:

sl.no	Date	Bank	Cheque No.	Amount
1	01.02.2010	Centurion Bank, Erode	010776	Rs.1,00,000.00
2	01.02.2010	Indian Bank, Chennimalai	865752	Rs.1,00,000.00
3	02.02.2010	Indian Bank, Chennimalai	365462	Rs.2,50,000.00

sl.no	Date	Bank	Cheque No.	Amount
4	02.02.2010	Indian Bank, Chennimalai	365433	Rs.2,50,000/-
5	03.02.2010	Indian Bank, Chennimalai	365434	Rs.2,50,000/-

(ii) At the request of the petitioner the complainant had presented the cheques for collection on 27.05.2010 and the same was returned on 29.05.2010 as 'payment stopped by drawer' and except the cheque No.010776 was returned as 'account closed'. The complainant issued a legal notice and after complying the legal mandates he filed a complaint for the offence under section 138 of NI Act.

3.4.After the case was taken on file, the copies were furnished and the trial was conducted. After conclusion of the trial the learned trial Judge found the guilt of the accused and the convicted him as under:

STC. No.	Conviction	Sentence
14/2016	U/s.138 of NI Act.	To undergo nine months simple imprisonment with compensation of Rs.8,75,000/- and in default to undergo one month simple imprisonment
13/2016	U/s.138 of NI Act.	To undergo nine months simple imprisonment with compensation of Rs.8,75,000/- and in default to undergo one month simple imprisonment
234/2016	U/s.138 of NI Act.	To undergo nine months simple imprisonment with compensation of Rs.8,75,000/- and in default to undergo one month simple imprisonment
235/2016	U/s.138 of NI Act.	To undergo nine months simple imprisonment with compensation of Rs.9,50,000/- and in default to undergo one month simple imprisonment

3.5. The Appeals in Crl.A.Nos.112, 114, 115 & 113 of 2017 preferred by the petitioner challenging the above said judgments were also dismissed by confirming the judgments of the trial Court. Aggrieved over the same, these revisions have been preferred.

4.Heard the submissions made by the learned counsels on either side and perused the materials available on record.

5.The learned counsel for the revision petitioner submitted that the repeated loans in lakhs within a short span of time itself is improbable; the Courts below have arrived at a conclusion basing upon the evidence PW.1 alone; there are lot of contradictions in the evidence of the complainant and that was brushed aside by the learned trial Judge and the learned Appellate Judge also did not appreciate the merits of the trial Court findings in a proper manner; in the evidence of PW.1 he had stated that he had given a total loan of Rs.41,75,000/- and for which, the accused had issued all the 17 cheques; however, in the civil suit, the complainant has stated that he had given Rupees One Crore as loan to the accused; there is a civil dispute pending between the wife of the accused and the wife of the complainant; he had further agreed that on 13/3/2006 there was an sale agreement with regard to a land and these complaints have been preferred; these cheques have been issued with an ulterior motive due to the pending suit; the complainant was working as a staff at BSNL; he got retired on 04/04/2012; he could not have got the financial capability to give hefty loan of Rs. 41,75,000/- to the accused in a very short span of time; the complainant has not stated that he has got any other income other than his salary; despite he has alleged that he had given a hefty loan to the accused; he is not an income tax assesse; the petitioner who has examined himself as DW.1; he had given these cheques before the year-2006 and that is with regard to the some land transactions and the same has been misused by the respondent; the Courts below have not appreciated the rebuttal evidence and the improbabilities in the case of the respondent; hence the confirmation of the judgment of the trial Court made by the learned Additional Sessions Court should be set-aside.

6.The learned counsel for the respondent submitted that the petitioner did not give any proper explanation as to why he had given the cheques to the respondent; even though the petitioner has stated that the cheques have been issued with regard to some other transactions between himself and with one Malar and he had paid all the amounts due, he had not taken any steps to get back the cheques; in fact the complaint was given by the petitioner for return of cheque itself has been referred as false; the evidence of the respondent proved the alleged transactions between the petitioner and the respondent vide these cheques and hence, the petitioner is entitled to the initial presumption; the revision jurisdiction of the High Court cannot be equated with that of the Appellate jurisdiction; the re-appreciation of the evidence is not permissible unless there is a gross miscarriage of justice had been caused.

7.The learned counsel for the petitioner submitted that the case of the respondent itself is an improbable because of the fact that he was working as staff in BSNL and he did not have any means to give hefty loans of this nature on several occasions. The evidence of DW.1 itself shows it is who had given the impugned cheques to the respondent. It is not the contention of the petitioner that the respondent had stolen away the cheque from him. When it is shown that the cheques were handed over by the petitioner to the respondent, the signature affixed on the cheques also to be presumed to be that of the petitioner only.

8.Even though the petitioner has stated that the cheques were issued for some other transactions between himself and one Malar, he did not prove the said fact. In fact a complaint given by the petitioner was also referred subsequently. Even though there are some other civil dispute between the petitioner's wife and the respondent's wife that has got no relevance to the transactions between the petitioner and the respondent through the impugned cheques. In fact, the complaint given by the petitioner against the respondent was also closed as referred charge sheet. The Civil disputes between the petitioner and the respondent would only show that the petitioner and the respondent were known to each other and they had different transaction between themselves.

9.In fact, the complaint given by the petitioner by alleging that the cheques were issued for the purpose of security was referred by the jurisdictional police. If the petitioner denies his signature on the cheques he should give proper explanation as to why these cheques were in the custody of the respondent. Having admitted that he handed over his cheques to respondent he cannot deny his liability. The petitioner has stated that the cheques have been given in respect of the transaction between himself and one Malar who is the wife of the petitioner. The said Malar has filed a civil suit against the petitioner and others in OS.No.227 of 2010 and sought certain reliefs in respect of the sale deed dated 3/12/2008.

10.According to the petitioner the civil suit has got relevance to the impugned cheques and the copy of the complaint in the said suit has been marked as Ex.D22. But the production of the plaint is not sufficient to prove that there is some relevance between the cheques and the civil suit, unless any fact surrounding the cheques also form part of the civil litigation. As stated already the criminal complaint given by the petitioner with regard to the impugned cheques have already been referred.

11. The petitioner has alleged that the respondent did not have any financial capability to lend a huge loan of Rs.41,75,000/- involved in all the cheques. But in the civil suit filed by the petitioner's wife itself it is averred that her husband was in the habit of getting loan from the respondent for his business purpose. The said plaint is the Defendant document and that itself admitted the financial capability of the respondent in giving loans to the petitioner. If the respondent lends money which is contrary to his service rules, his department ought to have taken action against him. And that cannot be the reason for the petitioner to deny his liability for the loans availed by him from the respondent.

12. The learned counsel for the respondent submitted that while exercising power of revisional jurisdiction, the Courts should not venture to re-appreciate the evidence. But it can only ensure that there is no miscarriage of justice has been caused. In support of the above submission he cited the judgment rendered by the Honorable Supreme Court held in the case of **State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri** reported in **1999 SCC OnLiine SC157**. In the said case it is held that the revision power cannot be equated with that the power of the Appellate Court and it cannot be treated as second appellate jurisdiction. In the said judgment it is read as under:

> *5.Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the*

jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tentamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence. In view of the order in this appeal, no further order is necessary in SLP(Criminal) No. 1466/94.

13.The learned trial Judge and the Appellate Judge have rightly appreciated the evidence and arrived at a conclusion and has found the accused guilty. Though this Court has adverted to refer certain evidence on record, it is for the purpose of ensuing that the court below had appreciated the evidence in a proper manner and there is no miscarriage of justice.

14.In view of the above stated reasons, I feel these revision petitions filed by the petitioner do not have any merit. However the learned counsel for the petitioner submitted that opportunities should be given to the parties to compound the offence in case such situation arises.

15. A conditional order has been passed by this Court in the case of **M.Aruchamy Vs. S.Kasiviswanathan** report in **2018 (1) MLJ CRL 663** to the following effects:

> *"16. In such view of the matter, the acquittal of the accused by the Sessions Court deserves interference and accordingly, the appeal is allowed and the judgment of the trial Court in STC No.271 of 2012 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, is restored.*
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> *Since the prosecution under Section 138 of the N.I. Act is quasi civil in nature, the Parliament has thought it fit to permit compounding of the offence under Section 147 of the*

N.I. Act. Instead of sending the accused to prison, this Court is of the view that if the accused deposits Rs.2,40,000/- towards the cheque amount and another sum of Rs.1 lakh as compensation and costs to the credit of STC No.271 of 2012, before the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, on or before 28.02.2018, the Magistrate shall disburse the amount to the complainant if he is alive or to his legal heirs and compound the offence. If the amount of Rs.3,40,000/- is not deposited on or before 28.02.2018, the trial Court shall issue warrant of commitment for the accused to undergo the sentence imposed upon him by judgment dated 07.02.2014 in STC No.271 of 2012."

16. Taking note of the above judgment cited by the petitioner, I feel it is appropriate to pass the following order:

(i) the Criminal Revision petitions in Crl.RC.Nos.1275, 1277, 1278 and 1279 of 2017 are **dismissed** and the conviction imposed in the judgment dated 08.09.2017 made in C.A.Nos.112,114,115 & 113 of 2017 on the file of the learned Additional Sessions Court Magalir Neethi Mandram (Fast Track Mahila Court) Erode are confirmed with a slight modification that the accused shall deposit the cheque amounts pertaining to each case as compensation to the credit of the respective S.T.C.Nos.14, 13, 234 & 235 of 2016 before the learned Judicial Magistrate Fast Track Court-I, Erode on or before 6 weeks from the date of the judgment.

(ii) In the event of the amounts paid the learned Magistrate shall disburse the same to the complainant if he is alive or to his legal heirs and compound the offences.

(iii) If the above said compensation is not paid within the said time the learned Magistrate shall issue warrant and commit the petitioner to prison to undergo the sentence imposed upon him vide the judgments dated 5/5/2017 in respective S.T.C.Nos.14, 13, 234 & 235 of 2016 and the sentence in all cases shall run concurrently. Consequently, connected miscellaneous petitions are closed.

03.02.2023

Index: Yes/No
Speaking/ Non Speaking
Internet: Yes/No
Neutral: Yes/No
jrs

To:

1. The Additional Sessions Judge,
   Magalir Neethi Mandram,
   (Fast Track Mahila Court),
   Erode, Erode District.

2. The Judicial Magistrate (Fast Track Court -I),
   Erode , Erode District.

R.N.MANJULA, J.,

jrs

Crl.RC.Nos.1275, 1277, 1278 and 1279 of 2017
and
Crl.MP.Nos.14714, 14715, 14716 & 14717 of 2017

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