

Crl.R.C.(MD).No.575 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.04.2025

PRONOUNCED ON : 20.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.575 of 2022

V.Muruganantham

... Revision Petitioner/Appellant/
Accused

Vs.

C.Sivakumar

: Respondent/Appellant/
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., to call for records from the lower Courts and set aside the judgment of the appellate Court passed by the learned II Additional District and Sessions Court, Trichirappalli in C.A.No.140 of 2018, dated 01.12.2021 modifying the judgment passed by the learned Judicial Magistrate No.IV, Trichirappalli made in S.T.C.No.187 of 2016, dated 15.10.2018.



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For Petitioner : Mr.G.Karuppasamy Pandian
for Mr.A.Joel Paul Antony

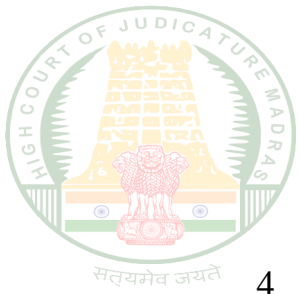
For Respondent : Mr.S.Saravagan Prabhu

ORDER

This Criminal Revision is directed against the concurrent judgments of conviction passed in C.A.No.140 of 2018, dated 01.12.2021, on the file of II Additional District Sessions Court, Trichirappalli, confirming the judgment made in S.T.C.No.187 of 2016, dated 15.10.2018, on the file of the Court of the Judicial Magistrate No.IV, Trichirappalli.

2. The revision petitioner is the accused. The respondent/complainant filed a private complaint under Section 200 Cr.P.C., against the revision petitioner/accused for the offences under Section 138 r/w 142 of the Negotiable Instruments Act.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the trial Court.



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4. The case of the complainant is that the accused borrowed a sum of Rs.3,50,000/- on 05.05.2008 and again Rs.3,00,000/- on 05.06.2008 totalling Rs.6,50,000/- agreeing to repay the amount with interest at 24%p.a., and executed a promissory note therefor, that when the amount was demanded, the accused agreeing to pay Rs.7,93,000/- towards principal and interest upto 05.04.2009, issued a cheque for Rs.7,90,000/- drawn on State Bank of India, Ramalinga Nagar branch, that the complainant presented the cheque for collection through State Bank of India, Ramalinga Nagar branch, but the cheque was returned for want of sufficient funds in the bank account of the accused, that the complainant then sent a legal notice dated 06.04.2009 to the accused demanding the amount covered by the cheque, that the accused having received the notice on 07.04.2009, sent a reply dated 19.04.2009 with false and untenable allegations and that since the accused has failed to pay the amount as demanded in the legal notice within the stipulated time, the complainant was constrained to lodge the complaint.

5. During trial, the complainant examined himself as P.W.1 and exhibited 7 documents as Exs.P.1 to P.7. The accused has examined two witnesses as D.W.1 and D.W.2 and exhibited one document as Ex.B.1. The learned Judicial



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Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the judgment dated 15.10.2018 convicting the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo two years simple imprisonment and to pay a compensation of Rs.7,90,000/-under Section 357 Cr.P.C., in default to undergo two months simple imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused preferred an appeal in C.A.NO.140 of 2018 and the learned II Additional District Sessions Judge, Trichirappalli, on perusing the records and on hearing the arguments of both sides, has passed the impugned judgment dated 01.12.2021, partly allowing the appeal modifying the sentence from two years simple imprisonment to one year simple imprisonment and confirmed the compensation awarded at Rs.7,90,000/-. Challenging the impugned judgment, the accused has preferred the present Criminal Revision.

6. Whether the concurrent judgments of conviction passed in C.A.No.140 of 2018, dated 01.12.2021, on the file of II Additional District Sessions Court, Trichirappalli, confirming the judgment made in S.T.C.No.187 of 2016, dated 15.10.2018, on the file of the Court of the Judicial Magistrate No.IV, Trichirappalli, is liable to be set aside is the point for consideration?

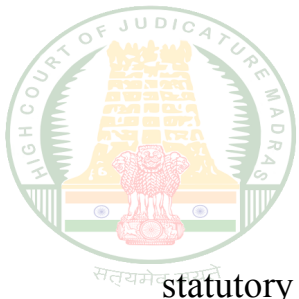


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7. The learned Counsel for the petitioner would submit that there is no evidence to show that there existed legally enforceable debt, that the complainant has not produced Income Tax Certificate or any proof that he advanced the loan amount, that the complainant's sister has been inducted as a lessee in respect of the house of the accused, that the lessee has given the lease amount to the accused, who in turn issued the disputed cheque to the complainant's sister for security purpose, that there is no privity of contract between the accused and the complainant, that the accused had examined the lessee's father to establish that the cheque was given only for the purpose of lease and that the Courts below without considering the evidence in proper perspective has mechanically recorded the conviction judgments.

8. The learned Counsel would further submit that the Courts below, applying the presumption clauses of the Negotiable Instruments Act under Sections 118, 138 and 139 in the nature of straight jacket formula, failed to consider as if there is a statutory presumption available and also assumed as if such presumption has to be adopted to each and every circumstances which culminates the impugned judgment of the Courts below, that though there is



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statutory provision available in the Act, the burden is not heavily cast upon the accused, it is for the prosecution to prove the guilt of the accused and that since some material is brought on record showing the innocence of the accused, the accused is entitled for the acquittal on the benefit of doubt.

9. The learned Counsel for the complainant would submit that the accused admitted the issuance of cheque and the signature found therein, that the accused has also admitted the existence of the legal enforceable doubt with the complainant, that the accused has subsequently taken a contradictory stand alleging that the cheque came to be issued to the complainant's sister, for the receipt of lease amount, that the Courts below considering the evidence available on record have rightly raised the statutory presumption under Sections 113 and 138 of NI Act, but the accused has failed to produce any iota of materials to rebut the statutory presumptions and that therefore, the impugned judgment of conviction and sentence is liable to be confirmed.

10. It is pertinent to note that the accused has taken a stand that he borrowed a sum of Rs.3,00,000/- from the complainant and since he was not in a position to repay the loan amount, it was agreed that the complainant's sister



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should be inducted as a lessee in the house owned by the accused and in pursuance of the complainant's request, the accused gave a blank cheque to the complainant's sister for the security purposes.

11. No doubt, the accused has produced the lease deed under Ex.B.1 and as rightly pointed out by the learned Counsel for the complainant, Ex.B.1 does not contain any such clause and nor referred to the loan transaction that existing between the complainant and the accused, whereas it has been shown as a lease deed which came to be executed in between the accused and the complainant's sister Sangeetha. As rightly observed by the learned trial Judge, in Ex.B.1 it has been stated that the accused had received Rs.3,00,000/- on 01.12.2018 for lease purpose and does not refer to the loan advanced by the complainant. No doubt, the accused has summoned and examined the father of the said Sangeetha – complainant's sister as D.W.2 and he would admit his signature found in Ex.B.1, but would say specifically that the amount given by her daughter Sangeetha for the lease purpose is entirely different from the loan advanced by the complainant to the accused.

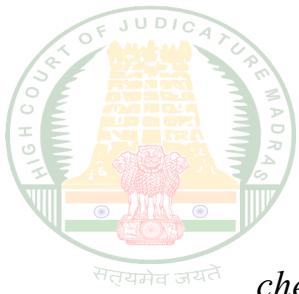


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12. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in **2019 (4) SCC 197**, wherein the Hon'ble Supreme Court has specifically held that subsequent filling in of an unfilled signed cheque is not an alteration and even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt and the relevant portions are extracted hereunder:

“If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the

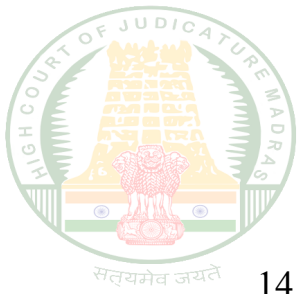


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cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.”

13. As rightly contended by the learned Counsel for the complainant, the accused at one stage has taken a stand that he gave a cheque to the complainant, but in another place stated that the cheque came to be issued to the complainant's sister. It is pertinent to note that when the complainant was cross-examined, it was suggested that the accused has not given the disputed cheque on 05.04.2009, but he has already handed over the signed blank cheque to the complainant and that the same was filled up and presented in the bank and that the said suggestion came to be denied by the complainant. In the subsequent cross-examination, it was suggested that the accused had borrowed Rs.3,00,000/- from the complainant and at that time issued unfilled cheque as a security. The learned first appellate Judge, considering the above evidence and also the materials available on record, has rightly drawn the presumption under Section 139 of the Negotiable Instruments Act, but the accused has miserably failed to rebut the presumption and on that basis, the Courts below have given a finding that the complainant has clearly proved his case.



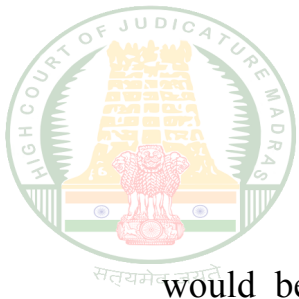
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14. As already pointed out, there is concurrent verdict of conviction and sentence against the accused. At the outset, it is pertinent to note that the jurisdiction under Sections 397 and 401 Cr.P.C., is confined to legality, propriety and correctness of the concurrent findings of conviction entered and sentence imposed on the accused. The revisional jurisdiction exercised by the High Court is supervisory jurisdiction for correcting miscarriage of justice. But at the same time, the revisional power cannot be equated with the power of an appellate Court nor it can be treated as a second appellate jurisdiction.

15. The Hon'ble Supreme Court in ***K.Chinnaswamy Reddy Vs. State of Andhra Pradesh*** reported in ***1962 AIR 1788***, has held that the revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in flagrant miscarriage of justice.

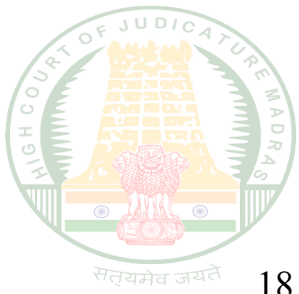
16. In ***Duli Chand vs Delhi Administration*** reported in ***(1975) 4 SCC 649***, the Hon'ble Apex Court reminded that jurisdiction of the High Court in Criminal Revision is severely restricted and it cannot embark upon a re-appreciation of the evidence and while exercising the supervisory jurisdiction in revision, the Court



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would be justified in refusing to re-appreciate the evidence for determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct.

17. It is pertinent to note that the revisional power under Cr.P.C., cannot be exercised in a routine and casual manner and while exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate Courts are required to do. The powers under Sections 397 and 401 Cr.P.C., are required to be exercised sparingly. In the matter of judicial review in criminal revision, this Court is of the view that this Court does not sit in appeal, but the scope is very limited and it is a supervisory jurisdiction, which is exercised by the Court to correct manifest error in the orders of Subordinate Courts, but should not be exercised in a manner so as to turn the Revisional Court in a Court of appeal. No doubt, there is absolutely no scope for re-appreciation of evidence once again, but at the same time, if the appreciation of evidence is tainted with the perversity, that can be interfered with. Even if an alternative view is possible, this Court cannot substitute its own view, in lieu of the concurrent views of the Courts below.

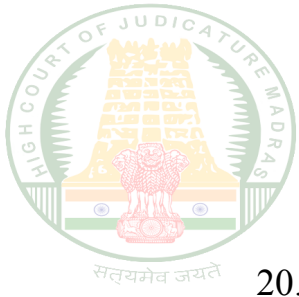


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18. Considering the above and on applying the legal position above discussed, this Court is of the clear view that there is nothing to show that the Courts below have failed to consider any material evidence in favour of the accused or have not appreciated the evidence. Hence, this Court decides that there is no illegality or perversity in the impugned order of conviction and sentence passed by the trial Court, which was confirmed by the appellate Court and no ground has been made out for interference in the revisional jurisdiction.

19. As already pointed out, though the trial Court has imposed punishment of two years of simple imprisonment, the first Appellate Court has rightly modified and reduced the sentence to one year simple imprisonment. The trial Court has rightly imposed compensation of Rs.7,90,000/-, being the cheque amount which came to be confirmed by the first appellate Court. Considering the above facts and circumstances and the reasonings given by the Courts below, this Court is not inclined to interfere with the punishment awarded. Hence, this Court concludes that the revision is absolutely devoid of merits and the same is liable to be dismissed.



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20. In the result, this Criminal Revision Case stands dismissed. The learned Judicial Magistrate No.IV, Trichirappalli is directed to take steps to secure the revision petitioner/ accused to undergo the remaining period of sentence, if any.

20.06.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
SSL

To

1. II Additional District and Sessions Court, Trichirappalli.
2. The Judicial Magistrate Court No.IV, Trichirappalli.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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