

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.264 of 2009
and M.P.Nos.1 and 2 of 2009

M.Nirmala Rani .. Petitioner / Appellant/ Accused

Versus

M.Selvakumar .. Respondent / Respondent/ Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 22.01.2008 in C.A.No.69 of 2006 on the file of the learned I Additional District Sessions Judge and Special Judge for EC Act Cases, Salem, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Salem, in C.C.No. 534 of 2004, dated 10.04.2006.

For Petitioner : Mr. S.R.John Sathyan

For Respondent : No Appearance

O R D E R

The petitioner/accused was convicted by the learned Judicial Magistrate No.II, Salem, in C.C. No. 534 of 2004, dated 10.04.2006, for an offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a sum of Rs.2,60,000/- as compensation. Challenging the same, the petitioner filed Criminal Appeal No. 69 of 2006 before the I Additional District Sessions Judge and Special Judge for EC Act Cases, Salem, which was dismissed on 22.01.2008, confirming the conviction and sentence imposed by the Trial Court. As against the same, the petitioner has filed the present Criminal Revision Case.

2. The case of the respondent/complainant is that the petitioner/accused borrowed a sum of Rs.2,80,000/- from the complainant on 01.07.2003 to meet out her urgent family expenses and on the same day, she has executed a promissory note. In order to discharge a part of the legal debt, she has executed a cheque on 02.06.2004 drawn on the Punjab National Bank for Rs.2,60,000/-. When the respondent/complainant has presented the cheque for collection, the cheque returned with an endorsement "insufficient funds" on 03.06.2004. The respondent/complainant has issued a statutory notice on 11.06.2004, calling upon the petitioner/accused to pay the cheque amount. Though, the petitioner/ accused has received the notice on 24.06.2004, she has not sent any reply and hence, the complaint. The Trial Court has found the accused guilty

of the offence and sentenced to undergo simple imprisonment for six months and to pay a sum of Rs.2,60,000/- as compensation. Aggrieved against the same, the petitioner filed Criminal Appeal No. 69 of 2006 before the I Additional District Sessions Judge and Special Judge for EC Act Cases, Salem, which was dismissed on 22.01.2008, confirming the conviction and sentence imposed by the Trial Court. Hence, the Criminal Revision Case.

3. The learned counsel appearing for the petitioner would submit that the entire loan amount has been discharged, but, the said fact has not been properly appreciated by Courts below. He would further add that the petitioner being an employee of the Postal Department, a Civil Case was filed against her and an order of attachment was obtained against her. He would further submit that the cheque was given only for security purpose, but, it was utilised for the purpose of filing the false complaint.

4. Today, when the matter is taken up, there is no representation on behalf of the respondent/complainant. Having regard to the fact that the matter is pending right from 2009, this Court is inclined to pass the following order after hearing the learned counsel for the petitioner/accused.

5. On a perusal of the records, it is seen that the petitioner/accused has borrowed a sum of Rs.2,80,000/- on 01.07.2003 by executing a promissory note. To discharge the part of the debt, the petitioner had executed a cheque for Rs.2,60,000/- on 02.06.2004. The cheque when presented for collection returned with an endorsement "insufficient funds". The first contention of the learned counsel appearing for the petitioner is that the petitioner has paid the entire loan amount. But, the fact remains that the petitioner has not established the fact of payment of the entire amount borrowed under pro-note by either adducing oral evidence or documentary evidence. Had the petitioner really paid the entire loan amount, she would have definitely obtained an endorsement on the backside of the promissory note, but, this is not done in this case. Further more, if really the petitioner has paid the entire loan amount, the respondent would not have withheld the pronote or the cheque and if he had really withheld the same, the petitioner ought to have taken diligent steps to get back those two documents, but, admittedly that was not done and even not a single document has been filed by the petitioner before the Trial Court for the entire payment of Rs.2,80,000/- and hence, the stand taken by the petitioner that she has paid the entire loan amount cannot be accepted at all.

6. As regards the last contention of the learned counsel for the petitioner that a Civil Suit was filed against her and an order of attachment was obtained against her, in my considered opinion, had it been true, the petitioner/accused would have filed a copy of the attachment before the Trial Court, but, none of the documents were filed on the side of the petitioner/accused and hence, this stand is also not sustainable.

7. The petitioner has taken the above stands even before the Lower Appellate Court and the Lower Appellate Court has rightly rejected the same. Hence, I do not find any reason to interfere with the reasoned judgment passed by the Lower Appellate Court and the judgment of the Lower Appellate Court stands confirmed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

paa

To

1.The I Additional District Sessions Judge
and Special Judge for EC Act Cases,
Salem.

2.The Judicial Magistrate No.II,
Salem.

1 cc to Mr.R. John Sathyam, Advocate, Sr. 19528

Crl. R.C. No. 264 of 2009

BR (CO)
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