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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-06-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 33 of 2009

Saradamma

...Petitioner/Accused

Versus

Radhakrishnaiah

...Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code against the Judgment dated 24.07.2008 passed in Criminal Appeal No. 169 of 2006 on the file of V Additional Sessions Judge, Chennai confirming the order dated 09.06.2005 made in C.C. No. 5896 of 1999 on the file of VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : No appearance

For Respondent : No appearance

ORDER

When the Criminal Revision Case is taken up for hearing, there is no representation on behalf of both sides. Having regard to the fact that this case is pending from 2009, I am inclined to dispose it of on merits.

2. The accused is the revision petitioner in this case. According to the respondent/complainant, the revision petitioner borrowed a sum of Rs.50,000/- from him and assured to repay it within two months. In order to discharge such debt, she has issued a cheque dated 07.01.1999 for Rs.50,000/- in favour of the respondent. The respondent deposited the cheque on 08.01.1999 with his bankers for clearance, but it was dishonoured on 09.01.1999 for want of funds. The respondent therefore issued a statutory notice dated 21.01.1999 which was received by the revision petitioner on 23.01.1999. In spite of the same, the revision petitioner neither issued any reply nor paid the cheque amount, hence, the respondent has filed C.C. No. 5896 of 1999 before the trial Court. After completion of trial, the trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced her to pay a fine of Rs.3,000/-, in default to pay the fine amount to undergo simple imprisonment of one month. The revision petitioner was also directed to pay a sum of Rs.50,000/-



being the cheque amount to the complainant within one month towards compensation under Section 357 (3) of Cr.P.C. Such conviction and sentence imposed on the revision petitioner was also confirmed by the appellate Court in the appeal filed by her in CrI.A. No. 169 of 2006 dated 21.07.2008. This Criminal Revision Case is filed against the above said judgments passed by the Courts below.

3. As per the decision of the Honourable Supreme Court in the case of (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Therefore, following the aforesaid decision of the Honourable Supreme Court, I proceed to deal with this case on merits.

4. The main ground of attack pleaded by the accused/revision petitioner in this Criminal Revision Case is that in the cross-examination of the complainant/respondent before the trial court, it was clearly elucidated that the cheque in this case has been issued only as a security towards an earlier transaction in respect of which the complainant also filed another case against the revision petitioner before the learned XVI Metropolitan Magistrate, Chennai. In spite of the above evidence, the courts below erroneously convicted and sentenced the petitioner.

5. It is seen from the order passed by the courts below that the signature of the revision petitioner in the cheque in question is not disputed. Even during the questioning under Section 313 (1) (b) of Criminal Procedure Code, the revision petitioner does not indicate the so-called circumstances under which she issued the cheque. It was not even stated that she has got a defence to be projected in the calander case that she is not liable to pay the cheque amount. The fact remains that the cheque was issued by the revision petitioner for the amount she had borrowed from the complainant/respondent and it is an enforceable debt. Even the revision petitioner did not issue reply to the statutory notice. Had the cheque in question been issued as a security for any other transaction, at the earliest point of time, she ought to have given a reply to the statutory notice indicating the above facts, but she has not chosen to issue any reply. The fact remains that there were transaction between the revision petitioner and the respondent to which the revision petitioner had issued several cheques. One of the cheque was presented in this case and in connection with the other cheques, complaint was filed and pending before the XVI Metropolitan Magistrate Court, Chennai. In any event, as pointed out by the courts below, the complainant/respondent has proved by adequate material evidence that the ingredients under Section 138 of the Negotiable Instruments Act have been duly fulfilled by him and the presumption that the cheque was issued for a legally enforceable debt and liability is in his favour. In such circumstances, I do



not find any reason to interfere with the orders passed by the Court below.

6. Accordingly, the Criminal Revision Case is dismissed.

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Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The V Additional Sessions Judge
Chennai
2. -Do- Through The Principal Sessions Judge,
Chennai.
3. The VII Metropolitan Magistrate
George Town, Chennai.
4. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai.

Crl.R.C No. 33 of 2009

TEJ (CO)
PSI (08.07.2015)