

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 437 to 439 of 2009

Zohra Bee

... Petitioner in all Revisions

Versus

M.Syed Siddique

... Respondent in all Revisions

Criminal Revision Cases filed under Section 397 read with 401 of Cr.P.C. against the Judgments dated 29.09.2008 made in C.A. Nos. 232, 233 and 231 of 2007 on the file of the learned VII Additional Judge, City Civil Court, Chennai, confirming the judgments of conviction and sentence by judgments dated 13.09.2007 made in C.C. Nos. 6594, 6595 and 6593 of 2004 on the file of the learned XIII Metropolitan Magistrate, Egmore.

For Petitioner : Mr. V.G.Suresh Kumar
in all Revisions

For Respondent : No Appearance
in all Revisions

COMMON ORDER

These Criminal Revision Cases are filed by the petitioner/accused, challenging the judgments of conviction and sentence passed in C.A. Nos. 232, 233 and 231 of 2007 on the file of the learned VII Additional Judge, City Civil Court, Chennai, dated 29.09.2008, confirming the judgments of conviction and sentence passed in C.C. Nos. 6594, 6595 and 6593 of 2004 on the file of the learned XIII Metropolitan Magistrate, Egmore, dated 13.09.2007, convicting the accused for the offence under Section 138 of the Negotiable Instruments Act and sentencing her to undergo simple imprisonment for six months in each case.

2. The case of the complainant/respondent is that the petitioner/accused had issued post-dated cheques to the complainant towards the liability amount due to him. On presentation, the cheques were dishonoured. After issuing statutory notices, the complainant filed the cases in C.C. Nos. 6594, 6595 and 6593 of 2004.

3. On being questioned under Section 313 of Cr.P.C., the petitioner/accused denied his guilt. Therefore, the Trial Court proceeded with the trial. After trial, the Trial Court, upon appreciation of the oral and documentary evidence, convicted the petitioner/accused under Section 138 of the Negotiable Instruments Act and sentenced her to undergo rigorous imprisonment for a period of six months in each case. On appeals, the Appellate Court confirmed the conviction and sentenced imposed by the Trial Court. Hence, these Criminal Revision Cases.

4. Mr.V.G.Suresh Kumar, learned counsel appearing for the petitioner/accused submitted that the cheques itself were given only for the purpose of getting a job for the complainant. He would further contend that the purpose for which the cheques were given is not for a legal purpose, if it is given for the illegal purpose, then, there is no contract as per the Indian Contract Act, 1872 (9 of 1872) and therefore, it is invalid. He would further add that when it is proved that the cheques were not supported by consideration, the Court below ought to have acquitted the accused.

5. Though, notice was ordered to be served on the respondent/complainant, till date, notice is not served on the respondent and there is no representation on behalf of the respondent and hence, after hearing the learned counsel for the petitioner, the matters are taken up and disposed of on merits.

6. The main ground of attack made by the learned counsel for the petitioner/accused is that even in the complaints, the complainant says that the cheques were issued for getting a job and that as per Section 23(f) of the Indian Contract Act, 1872, if any transaction is done for getting an employment in the public service, the very agreement itself is void, as the consideration for it is unlawful and therefore, when it is proved that the cheques were not supported by consideration, the Court below ought to have acquitted the accused.

7. But, on a careful reading of the entire papers, it is seen that no where it is stated that the cheques were given for the purpose of getting a job in the Government organisation. What is stated is that the accused agreed to get a job, getting a job does not mean that it is a Government job. Further more, it is also not the case of the respondent/complainant that the accused promised to get a Government job, if the accused has stated so, then the agreement itself would have been void and therefore, rightly both Courts below have held that once the issuance of cheques have been admitted, the presumption is in favour of the complainant and it is for the accused to rebut the presumption, when that has not been done properly by the accused by letting in evidence, the Appellate Court has rightly convicted the accused.

8. At this juncture, learned counsel for the petitioner/accused pleaded that some reduction in punishment may be granted.

9. Taking into consideration of the fact that the petitioner/accused has pleaded mercy before this Court and that the cheque amount involved in each case is Rs.10,000/-, instead of the punishment of six months simple imprisonment in each case, I am inclined to modify the said punishment to that of directing the petitioner/accused to pay double the amount of the cheques in question in each case, which will be the just and correct amount payable to the respondent/complainant, which shall be directly payable to the respondent/complainant, within a period of four weeks from the date of receipt of a copy of this order. In default to pay the said amount within the time stipulated herein, the petitioner/accused shall undergo rigorous imprisonment for three months in each case.

10. Subject to the above modification in sentence, these Criminal Revision Cases are partly allowed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The VII Additional Judge,
City Civil Court, Chennai.

1a.-Do- Through The Principal Judge,
City Civil Court,
Chennai.

2. The XIII Metropolitan Magistrate,
Egmore, Chennai.

2a.-Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai.

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SV(CO)
CA(03/08/2015)