

The Revision Petitioner Viz Mrs.Jalamathirani W/o. Jagadeesan was directed to release on bail as per order of this Court dated 6.1.2009 in Crl.M.P.No.1 of 2008 in Crl.R.c.No.1660 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1660 of 2008

Mrs. Jalamathirani .. Petitioner

vs

P.S.Parvathy
rep by power agent Viswanathan ... Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the judgment made by the XVI Metropolitan Magistrate, G.T.Chennai made in C.C.No.3461 of 2003 dated 24.3.2008 convicting and sentencing the petitioner to undergo simple imprisonment of 1 month and to pay a compensation of Rs.20,000/- (Rupees Twenty Thousand only) within a period of one month to the complainant and confirmed by the VI Additional Sessions Judge, City Civil Court, Chennai in C.A.No.146 of 2008 dated 03.11.2008 and to call for the records and set aside the same.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

No representation for the petitioner / accused as well as for the respondent/ complainant. Even in the year 2012, this Court directed the petitioner to take private notice to the respondent. But till date, no notice was taken. AOS also not filed. Hence, as per the judgment of the Hon''ble Apex Court reported in (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. Accordingly, this matter is taken up for disposal on merits.

2. The complainant preferred a private complaint under Section 138 of Negotiable Instrument Act alleging that the complainant is the sister of power of attorney Viswanathan and that the accused received Rs. 20,000/- on the basis of pronote on 24.10.2002 and 14.12.2002 and for that the accused issued a cheque for a sum of Rs.20,000/- dated 12.3.2002. When the cheque was

presented, it was returned as account closed. Hence, the complainant sent a legal notice asking the accused to pay the amount but the same was also returned. Therefore, the complainant preferred a complaint under Section 138 of N.I. Act and the same was taken on file by the XVI Metropolitan Magistrate, G.T. Chennai in C.C.No.3461 of 2003. After due trial, by judgment dated 24.3.2008, the learned Magistrate convicted the petitioner/accused under Section 138 of NI Act and sentenced her to undergo one month Simple Imprisonment and to pay the cheque amount of Rs.20,000/- to the complainant as compensation within a month. Against which, the accused preferred a Criminal Appeal No.146 of 2008 and the same was also dismissed by the City Civil Court, Chennai by confirming the conviction and sentence passed by the trial Court. Aggrieved over the said judgment, the accused has preferred this Revision.

3. It is the case of the petitioner/accused that the complaint itself is not maintainable as it has been filed through Power of Attorney. According to the petitioner, the evidence of P.W.1 cannot be considered as he is the power agent. Further as per the evidence of P.W.3, the accused never issued cheque in favour of P.W.3 and only pro-note has been issued. Therefore, the conviction and sentence imposed by the Court below is not correct. It is also the case of the petitioner that the Courts below have wrongly come to the conclusion that the rebuttal has not been properly done by her.

4. Since no notice was served by the petitioner, none appears for the respondent.

5. I have perused the entire materials available on record.

6. On a perusal of the order passed by the Court below, it is seen that the petitioner / accused did not deny the cheque and the signature found in the cheque. From the evidence of P.W.3, it is clear that the accused is in the habit of issuing cheque to various persons for renewal of the loans. D.W.1 also categorically stated that the cheque in question has been issued to one viswanathan and thereafter it was handed over to the present complainant. P.W.3 also admitted in her cross examination that the blank pronote was given at the time of loan and thereafter only, it was filled up. Therefore, both the Courts below have rightly come to the conclusion that even though the complaint was given by the power of Attorney, the examination of P.W.3 itself is sufficient to prove the case and, therefore, there is no need to go into the question of Power of Attorney. Even otherwise, it is not the case of the petitioner that he has not given a cheque at all. In fact, he has admitted the issuance of cheque in question and he has stated that blank pronote was issued to another person. Therefore, the accused herself has categorically admitted the issuance of pronote as well as the cheque. P.W.3 also states that she obtained the blank pronote from the accused and later it was filled up and filed as Exs.P2 and P3. Since the signature is admitted by the accused, there is no need for to go into the question as to whether the complaint filed by Power of Attorney is maintainable or not. Further, for statutory notice, no reply has been sent and no evidence has been examined by the revision petitioner/ accused.

7. Therefore, both the Courts below have rightly held that mere power of attorney is not proved, it will not vitiate the complainant case since the complainant, i.e. drawee of the cheque is also examined as PW3 in this case. Insofar as rebuttal is concerned, the accused herself was examined as DW1 and none of the documents was marked by the accused side. On the other hand, the petitioner / accused has clearly admitted that the cheque belongs to her and the signature in the cheque also belongs to her. Further, the sentence imposed by the Courts below is very meager. The fine amount is also very reasonable.

8. In such circumstances, I do not find any reason to interfere with the reasoned order of the Courts below.

In the result, this Criminal Revision Case is dismissed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

To

1. The VI Additional Sessions Judge,
City Civil Court, Chennai
2. do thro the Principal Sessions Judge
Chennai
3. The XVI Metropolitan Magistrate,
George Town, Chennai.
4. do through the Chief Metropolitan Magistrate
Egmore, Chennai-8
5. The Public Prosecutor, Madras
6. The Section Officer
Criminal Section,
High Court, Madras

Cr1.R.C.No.1660 of 2008