

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2017

DELIVERED ON : 26.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1619 of 2016

and

Crl.M.P.No.13528 of 2016

Divya

... Petitioner

VS

A.K.Suresh Kumar

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned XIX Additional Sessions Judge, Chennai, passed in C.A.No.38 of 2016 on 28.11.2016 confirming the judgment of learned Metropolitan Magistrate, Fast Track Court III, Saidapet, passed in C.C.No.63 of 2012 on 27.01.2016.

For Petitioner : Mr.C.M.Gunasekaran

For Respondent : Mr.R.Murali

ORDER

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act, sentencing him to 6 months S.I. and directing him to pay the cheque amount as compensation.

2. Respondent/complainant moved prosecution informing that petitioner/accused borrowed a sum of Rs.6,15,000/- from him and towards repayment thereof, cheque bearing No.415731 dated 09.08.2011 drawn on Vijaya Bank, Ashok Nagar branch, Chennai, stood issued to him, which upon presentation was returned unpaid for the reason "insufficient funds". Respondent/ complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint has been filed.

3. Before the trial Court, respondent/complainant examined himself and marked five exhibits. Petitioner/accused examined himself and two other witnesses and marked four exhibits.

4. On appreciation of materials before it, trial Court, under judgment dated 27.01.2016, convicted petitioner, sentenced and directed him to pay the cheque amount as compensation. The appeal preferred by petitioner in C.A.No.38 of 2016 on the file of learned XIX Additional Sessions Judge, Chennai, came to be dismissed under judgment dated 28.11.2016. Hence, this revision.

5. Heard learned counsel for petitioners and learned counsel for respondent.

6. In the instant case, the following facts are established:

- (i) respondent/complainant and one Srinivasan had married sisters.
- (ii) at the instance of respondent, petitioner had taken out a LIC policy through Srinivasan who was a LIC agent.
- (iii) the LIC policy lapsed.
- (iv) respondent has admitted that in the year 2010 a criminal complaint was preferred by the husband of the petitioner alleging respondents misbehaviour with her.

In the above circumstances, the respondent informs of a borrowing

having been effected by petitioner in the year 2008 and cheque giving rise to action, dated 09.08.2011 was issued towards repayment.

7. Learned counsel for petitioner has contended that petitioner and respondents were family friends, that upon the insistence of respondent, petitioner took out a LIC policy through one Srinivasan, the same lapsed and the undated cheque was handed over to respondent towards renewal of the policy. The particulars regards Srinivasan being a LIC agent, the details of LIC policy and lapse thereof have been obtained through the Right to Information Act. The relevant documents have been marked as Exs. D1 to 4.

8. Learned counsel also submitted that given the complaint preferred by the petitioner's husband against the respondent, which position stands admitted by respondent, there hardly would be possibility for petitioner issuing a cheque in favour of respondent.

9. The above scenario clearly make out a case of petitioner/accused having rebutted the presumption u/s. 139 of the Negotiable Instruments Act. In such event it is the duty of respondent/complainant to prove the debt.

Respondent/complainant has failed to do so.

The Criminal Revision Case is allowed. The judgment of learned XIX Additional Sessions Judge, Chennai, passed in C.A.No.38 of 2016 on 28.11.2016 confirming the judgment of learned Metropolitan Magistrate, Fast Track Court III, Saidapet, passed in C.C.No.63 of 2012 on 27.01.2016 shall stand set aside. Petitioner shall stand acquitted of all charges. Bail bonds, if any, executed by petitioner shall stand cancelled. Connected miscellaneous petition is closed.

26.07.2017

Index:yes/no
Internet:yes

To

1.The XIX Additional Sessions Judge,
Chennai

2.The Metropolitan Magistrate,
Fast Track Court III, Saidapet,

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C.T.SELVAM, J

kpr



Pre-delivery order
in
Criminal Revision Petition No.1619 of 2016

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26.07.2017