

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1675 of 2016

and

Crl.M.P.Nos.13847 and 13849 of 2016

1.Mohanraj Hardware
represented by its Proprietor
S.Latha,
1942, Trichy Road,
Coimbatore.

2.S.Latha
W/o.S.Sivakumar

.. Petitioners

VS.

1.The State
represented by Public Prosecutor

2.S.Padma
W/o.L.Selvam

.. Respondents

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned II Additional Sessions Judge, Erode, passed in C.A.No.15 of 2016 on 31.08.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court II, Erode, passed in C.C.No.338 of 2012 on 02.12.2015.

For Petitioners : Mr.Kingsly Solomon J

For Respondents : Mr.V.Arul,

Additional Public Prosecutor [R1]

Mr.S.Kaithamalai Kumaran [R2]

ORDER

This Court has reserved orders in this revision on 03.03.2017. Thereafter, the matter was listed on three occasions. Today, the matter is listed under the caption 'for orders'. When the matter is taken up, it is represented that the petitioner/accused has not effected payment as agreed. Hence, this Court proceeds to pass orders on merits.

2. This revision arises against two concurrent judgments of Courts below convicting petitioners for offence u/s.138 of the Negotiable Instruments Act and sentencing petitioners to 1 year S.I. and fine of Rs.5,000/- i/d 1 month S.I.

3. Second respondent moved a prosecution informing that petitioners borrowed sums of Rs.50,000/- on 26.02.2012 and Rs.6,00,000/- on 03.03.2012 from the complainant and cheque bearing Nos.(i)246811 dated 26.03.2012 in a sum of Rs.50,000/- and (ii)246805 dated 03.04.2012 drawn on Indian Overseas Bank, Oppanakarar Branch, stood issued to him by petitioners towards repayment of borrowing, which upon presentation was returned unpaid for the reason "Exceeds Arrangement". Second respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed. The case was

taken on file in C.C.No.338 of 2012 on the file of learned Judicial Magistrate, Fast Track Court II, Erode.

4. Before the trial Court, second respondent examined herself and marked seven exhibits. None were examined on the side of defence, however, two exhibits were marked.

5. On appreciation of materials before it, trial Court, under judgment dated 02.12.2015, convicted petitioner and sentenced them to 1 year S.I. and fine of Rs.5,000/- i.d 1 month S.I. There against, petitioner preferred C.A.No.15 of 2016 on the file of learned II Additional Sessions Judge, Erode. Appellate Court, under judgment dated 31.08.2016, dismissed the appeal. There against, the present revision has been filed.

6. Heard learned counsel for petitioners, learned Additional Public Prosecutor and learned counsel for second respondent. Perused the materials on record.

7. In convicting petitioners, Courts below have found that though it was the case of second petitioner that she has not borrowed any amount from second respondent/complainant, that her husband borrowed a sum of

Rs.5,00,000/- from second respondent/complainant and towards security, her husband has issued 14 blank cheques of second petitioner without her knowledge, two blank cheques of her husband and registration certificate of his Car and that two of the cheques of second petitioner had been misused by complainant towards foisting a false case, she has not established that other 12 cheques have not been presented for collection. Further, no oral and documentary evidence has been adduced to establish that apart from the subject cheques, 12 other cheques have also been given to second respondent/complainant. Once the issuance of cheques and signatures therein have been admitted, it is for petitioners/accused to establish that they have not been given for legally enforceable debt, which petitioners have failed to do. On the above reasoning, Courts below have found that second respondent/complainant has established her case and petitioners/accused have failed to rebut the presumption that arises u/s.139 of the Negotiable Instruments Act and accordingly, arrived at a finding of conviction. This Court finds no error in the judgments under challenge.

The Criminal Revision Case is dismissed. Connected miscellaneous petitions are closed.

26.07.2017

Index:yes/no, Internet:yes
gm

To

- 1.The II Additional Sessions Judge,
Erode.
- 2.The Judicial Magistrate,
Fast Track Court II,
Erode.



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C.T. SELVAM, J

gm



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