

BAIL SLIP

The Accused/Appellant R.S.Rani W/o. Sakthivel was directed to be released on bail as per order dated 22.02.2013 in MP.3 of 2013 in CrI.RC.225/13 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :12.09.2017

PRONOUNCED ON :14.12.2017

CRL.RC. No.225 of 2013

and

M.P.Nos.1 to 3 of 2013

R.S.Rani

..

Petitioner

..Vs..

V.Suresh

through his Power of attorney agent

A.Varadharajan

..

Respondent

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to call for the records in C.A.No.177 of 2012 on the file of the IV Additional Sessions Judge, Coimbatore, issue notice to the respondents, hear the parties and for the grounds raised in the above pleadings the additional grounds that may be raised at the time of arguments set aside the order of conviction and sentence passed by the learned IV Additional Se in C.A.No.177 of 2012 vide order dated 21.01.2013 confirming the order of conviction and sentence rendered by the Judicial Magistrate cum Fast Track Court II, Coimbatore in C.C.No.266 of 2011 by the order dated 25.04.2012.

For Petitioner :Mr.C.D.Johnson

For Respondent :Mr.T.Ramkumar

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., call for the records in C.A.No.177 of 2012 on the file of the IV Additional Sessions Judge, Coimbatore, issue notice to the respondents, hear the parties and for the grounds raised in the above pleadings the

additional grounds that may be raised at the time of arguments set aside the order of conviction and sentence passed by the learned IV Additional Se in C.A.No.177 of 2012 vide order dated 21.01.2013 confirming the order of conviction and sentence rendered by the Judicial Magistrate cum Fast Track Court II, Coimbatore in C.C.No.266 of 2011 by the order dated 25.04.2012.

2. The respondent herein is a private complainant moved the petition under Section 200 of Cr.P.C alleging commission of the offence by the accused under Section 138 of Negotiable Instruments Act.

3. After observing the proceedings, the same was taken on C.C.No.266 of 2011 by Judicial Magistrate, Fast Track Court No.II, Coimbatore and who laid conviction and against which, the revision has been filed and the same is confirmed.

4. The learned counsel for the accused/petitioner has submitted that both the Courts below has not properly gone into the material alteration in the cheque and failed to see that there is no pre-existing legally enforceable debt for the cheque-in-issue and in the absence of any positive proof for re-validation of the date, both the Courts have erroneously laid the conviction and sought to set aside the same.

5. The learned counsel for the respondent made a submission in support of the orders passed by the Courts below.

6. Points for consideration is that:-

i) Whether conviction order passed by the Courts below is sustainable in law?

ii) Whether sentence award is excessive?

7. The brief facts of the case is that are necessary for determination of this revision are as under:-

The case of the complainant is that, towards the discharge of the liability of the husband of the accused, she issued the disputed cheque. Initially, the issue of the cheque was denied by the accused. Later, another contention was raised that, since she was not connected with the business transaction between the complainant and her husband, she cannot be fastened with any liability. Another contention was that, the cheques were handed over to the complainant as security for some business purpose and that was misused by the complainant.

8. As stated supra, the case of the complainant is that in order to discharge the liability of the husband of the accused, she issued cheque-in-issue and on bouncing of the cheque for insufficiency of funds exceeding the arrangements and statutory notice was issued and after the reply, however, not paid the amount and hence, the private complaint.

9. It is seen from the reply notice as well as the

suggestions to be put to P.W.1 during the cross-examination that at one point of time, the accused had admitted issuance cheque and her signature and in the cheque-in-issue. However, during the subsequent cross-examination of P.W.1 the suggestive case has been modified as that of the cheque was issued as a security for some business and same was misused.

10. Both the Courts below after taking into the clear and cogent evidence of P.W.1 and firm answer given in the cross-examination of the P.W.1 come to the conclusion that P.W.1 is a competent person to speak about the transaction between the parties and their exist a pre-existing legally enforceable debt for the issuance of the cheque from the cross-examination of the P.W.1, both the Courts below have come to the conclusion that there was a business transaction between the complainant and the husband of the accused and the accused has issued her cheque and she also admitted the signature in the cheque.

11. It remains to be stated that for the parties being drawer a cheque, consideration can be a liability of a person either for himself or towards the discharge of the third party liability. In this incident case, it is admitted by the revision petitioner/accused that she issued the cheque for the liability for her husband and hence, when the signature in the cheque has been accepted. Both the Courts below have rightly come to the conclusion that the complainant is entitled for the presumption as contemplated under 139 of the Negotiable Instruments Act cannot be validated with.

12. The learned counsel for the revision petitioner has drawn the attention of this Court to the xerox copy of the cheque and contended that re-validation has been done by the accused, even though, the date was put by her husband. On perusal of the cheque-in-issue (xerox copy) the amount both in words and in figures as well as the date are been scored of and the same has been counter signed by none other the accused in her full signature in all the 3 places as could be noticed from the cheque-in-issue and taking note of the fact that she has admitted the signature in the cheque admitted the re-validation and in view of the presence of the counter signature of the accused in all the 3 places, as noted above, the lower Appellate Court has rightly held that the so-called re-validation having been admitted by the accused herein and hence, she cannot recourse to Section 87 of the Negotiable Instruments Act since, herself has admitted that she has re-validated the cheque by counter signing at appropriate places and thus, in view of her own admission of the cheque the signature in the cheque is that of the revision petitioner/accused and in view of the clear and cogent revision of P.W.1 regarding the business transaction between the complainant and the husband of the accused and dishonored of the cheque for insufficient of funds, both the Courts below have rightly come to the conclusion that the complainant is

entitled for presumption and the accused has miserably failed to rebut such a presumption and consequently, the conviction laid by both the Courts below does not suffer from any irregularity or illegality warranting interference by this Court and hence, the conviction passed by the trial Court as confirmed by the lower Appellate Court is hereby confirmed.

13. Taking into consideration, amount of the cheque and the sentence laid therefor, this Court finds that the same is in appropriate to the amount of the cheque and hence, the same cannot be termed as excessive and accordingly, the sentence awarded by the Courts below are hereby confirmed.

14. In the result, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional Sessions Judge, Coimbatore
2. The Judicial Magistrate cum Fast Track Court II, Coimbatore
3. do thro the chief judicial magistrate, Coimbatore
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.RAMKUMAR Advocate, S.R.No. 89310

Pre-Delivery

Order in

CRL.RC. No.225 of 2013 and

M.P.Nos.1 to 3 of 2013

KK (CO)
TR(22/01/2018)

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