IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 21.12.2018

CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.159 of 2011

E.Manjula ..Petitioner/Appellant/Accused

Vs

A.Vedavalli .. Respondent/Respondent/Complainant

Prayer:Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. against the judgment dated 13.10.2010 passed by the Additional Sessions Judge, FTC-V, Chennai in Crl.A.No.102 of 2010 confirming the conviction and sentence passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1330 of 2006 dated 07.06.2010.

For Petitioner : Mr.Samuel Raja Pandian

For Respondent : Mr.S.Mahimairaj

O R D E R

This Criminal Revision Petition has been preferred challenging the judgment dated 13.10.2010 passed by the learned Additional Sessions Judge, Fast Track Court-V, Chennai in Crl.A.No.102 of 2010.

2.For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3.The complainant initiated a prosecution in C.C.No.133 of 2006 before the XVIII Metropolitan Magistrate, Saidapet, Chennai, against the accused under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") for the dishonour of the cheque dated 05.10.2005 on the ground "funds insufficient". Before the trial Court, the complainant examined herself as PW1 and marked Exs.P1 to P5.

4.When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against her, she denied the same. On behalf of the accused, three witnesses were examined and six documents were marked.

5.It is the specific defence of the accused that she wanted a loan and the complainant promised to arrange the loan, for which, the complainant collected the title deeds of the property of the accused and also obtained three blank cheques as security, but, did not arrange for the loan, as assured by her. When the accused asked the complainant to return the title deeds and the blank cheques, the complainant has filled up one of the cheques and has initiated the prosecution.

6.The trial Court convicted the accused and slapped a sentence on her to undergo three months simple imprisonment, besides directing her to pay twice the amount of cheque, viz., Rs.4,00,000/- as compensation. Challenging the conviction and sentence, the accused preferred Crl.A.No.102 of 2010 before the Court of Session, which was heard by the Additional Sessions Judge (FTC-V), Chennai and the same was dismissed on 13.10.2010, thereby, confirming the judgment of the trial Court, challenging which, the accused is before this Court.

7.Heard Mr.Samuel Raja Pandian, learned counsel for the accused and Mr.Mahimairaj, learned counsel for the complainant.

8.It is trite that while exercising powers under Section 397 r/w 401 Cr.P.C., this Court cannot act as second appellate court and re-appreciate the evidence. However, if it is brought to the notice of the Court that, the Courts below had failed to consider a material piece of evidence or had committed any jurisdictional error, the revisional Court can certainly interfere. In this case, there appears to be a jurisdictional error, inasmuch as, the complainant has not even stated a word about the debt in the complaint. It may be necessary to extract the complaint averments verbatim :

> "3.The complainant states that the accused issued a cheque to her for a sum of Rs.2,00,000/- vide cheque No.236871 dated 05.10.2005 drawn on Indian Bank, E.R.A.Puram Branch, Chennai-28. The complainant presented a Cheque through her banker Indian Bank, Mylapore Branch, Chennai-4. Unfortunately on 15.10.2005 Indian Bank, E.R.A.Puram Branch, Chennai-28 returned the cheque with an endorsement of "FUNDS INSUFFICIENT" to the complainant Banker, Indian Bank, Mylapore Branch, Chennai-4. Hence the accused thereby have acquitted an offence under Section 138 of Negotiable Instrument Act."

9.Similarly, even in the statutory notice dated 31.10.2005 (Ex.P4) that was issued by the complainant to the accused, there is no whisper about any debt. To maintain a prosecution under Section 138 of the NI Act, a debt is a sine qua non. Section 138 of the NI Act clearly states that the cheque should have been issued "for the discharge, in whole or in part, of any debt or other liability".

10.Mr.Mahimairaj placed strong reliance on the following judgments of the Supreme Court :

i. K.N.BEENA Vs. MUNIYAPPAN AND ANOTHER [(2001) 8 SCC 458].

ii. M.M.T.C. LTD. and ANOTHER Vs. MEDCHL CHEMICALS AND PHARMA (P) LTD. AND ANOTHER [(2002) 1 SCC 234].

11.In M.M.T.C. Ltd. (supra), the proceedings were quashed at the threshold and in that context, the Supreme Court has held so. In K.N.Beena (supra), the Supreme Court has held that the accused had failed to discharge the burden under Section 139 of the NI Act. In this case, the absence of any averment relating to the cheque being issued for a debt, should be viewed not in isolation, but, in the background of evidence of three witnesses examined by the accused.

12.In Rangappa Vs Sri Mohan [2010 (4) CTC 118], the Supreme Court has held that the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability and not by proof beyond reasonable doubt.

13.In the evidence of the complainant, she has stated that she gave Rs.30,000/- to the accused and obtained the cheque for Rs.2,00,000/-. She has also admitted in the cross-examination that she did not obtain any promissory note or receipt from the accused for the alleged loan. Therefore, on the facts of this case, this Court finds that the accused has discharged the burden under Section 139 of the NI Act satisfactorily.

14.When this case came up for hearing on 29.11.2018, Mr.Samuel Raja Pandian submitted that, his client, viz., the accused does not want to run the risk of a full-fledged hearing in this revision petition, fearing adverse verdict and therefore, she is ready and willing to pay Rs.4,50,000/- to the complainant as full and final settlement of all claims.

15.Today, Mr.Samuel Raja Pandian submitted that though this Court is inclined to allow the revision petition, yet, the accused does not want to go back on the word given by her on the previous date, true to which, he handed over a demand draft for Rs.4,50,000/- as against the cheque amount of Rs.2,00,000/- to Mr.Mahimairaj, learned counsel appearing for the complainant across the Bar as full and final settlement of all pending claims between the parties. Mr.Mahimairaj also submitted that he has instructions from his client to accept the amount as full and final settlement. Accordingly, the demand draft bearing No.507600 dated 11.12.2018 drawn on Indian Overseas Bank, Mylapore Branch, in the name of A.Vedavalli has been handed over to Mr.Mahimairaj.

In the result, this Criminal Revision Petition is allowed and the judgment of conviction and sentence dated 13.10.2010 passed by the learned Additional Sessions Judge, Fast Track Court-V, Chennai in Crl.A.No.102 of 2010 and also the judgment of conviction and sentence dated 07.06.2010 passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1330 of 2006 are set aside. The bail bonds are discharged and the fine amount paid if any, shall be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The Additional Sessions Judge,
Fast Track Court-V, Chennai.

2.The XVIIIth Metropolitan Magistrate,
Saidapet, Chennai -15.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Mahimai Raj, Advocate, S.R.No.1/2019

CRL.R.C.No.159 of 2011

SSV(CO)

rrs 31/01/2019