

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2018
CORAM:
THE HONOURABLE MR. JUSTICE P.N.PRAKASH
CRL.R.C.No.455 of 2011

Indira

.. Petitioner

Vs.

Prakash

.. Respondent

PRAYER: The Criminal Revision has been filed under Section 397 (1) read with 401 of Criminal Procedure Code to set aside the judgment made in Crl.A.No.338 of 2008 dated 04.02.2011 passed by the Additional District Judge and Fast Track Court-III, Coimbatore, in reversing the order made in STC No.2162 of 2006 on the file of the Judicial Magistrate No.1, Coimbatore, dated 17.09.2008 and restore the order of conviction.

For Petitioner : Mr.Adithya Varadarajan

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O R D E R

The present Criminal Revision has been filed against the judgment made in Crl.A.No.338 of 2008 dated 04.02.2011 passed by the Additional District Judge and Fast Track Court-III, Coimbatore, in reversing the order made in STC No.2162 of 2006 on the file of the Judicial Magistrate No.1, Coimbatore, dated 17.09.2008 and restore the order of conviction.

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

3. It is the case of the complainant that the accused borrowed a sum of Rs.5,00,000/- as loan for his business purposes on 24.04.2004 and executed a promissory note (Ex.P6) for the said amount agreeing to repay the same with interest at 24% per annum; towards the said debt, the accused issued the impugned cheque for Rs.5,00,000/- and the same was returned unpaid with the endorsement "funds insufficient" on 23.11.2005; on the instructions of the accused, the impugned cheque was presented for the second time on 10.01.2006 and again, it was returned unpaid for the same reason on 12.01.2006; the complainant issued a statutory notice on 30.01.2006; the accused sent a reply notice on 02.02.2006; the complainant initiated a prosecution in S.T.C.No.2162 of 2006 before the Judicial Magistrate No.1, Coimbatore, under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I. Act") against the accused. The accused was questioned under Section 251 Cr.P.C and he denied the accusation.

4. To prove the case, the complainant examined herself as P.W.1 and marked seven documents (Exs.P1 to P7).

5. When the accused was questioned on the incriminating circumstances appearing against him under Section 313 Cr.P.C., he denied the same. On behalf of the accused, three witnesses were examined as D.W.1 to D.W.3 and two documents were marked as Exs.D1 and D2.

6. After considering the evidence adduced by both sides and hearing either side, the trial Court, by judgment dated 17.09.2008, convicted the accused under Section 138 of the N.I. Act and sentenced him to undergo six months Simple Imprisonment and imposed a fine of Rs.1,000/- in default to undergo 1 month Simple Imprisonment. Challenging the conviction and sentence, the accused has filed CrI.A.No.338 of 2008 in the Court of Session, which was heard by the Additional District Judge (Fast Track Court No.III), Coimbatore, who, by judgment dated 04.02.2011, has acquitted the accused. Challenging the acquittal, the complainant has filed the present Revision Petition in CrI.R.C.No.455 of 2011.

7. Heard Mr.Adithya Varadarajan, learned counsel appearing for the complainant.

8. At the outset, when this Court posed a query on the very maintainability of this Revision Petition, since against the order of acquittal, the remedy available is an appeal under Section 378(4) Cr.P.C., Mr.Adithya Varadarajan, learned counsel appearing for the complainant fairly conceded the legal position and prayed that the present Revision Petition can be converted into an appeal under Section 401(5) Cr.P.C.

9. As regards limitation, it is seen that the judgment of the Sessions Court acquitting the accused is dated 04.02.2011 and the Revision Petition before this Court has been filed on 21.03.2011, which is well within the period of limitation. Therefore, this Revision Petition is converted into a petition for Special Leave to Appeal under Section 378 (4) Cr.P.C. It is trite that leave to appeal against an order of acquittal is not automatic and leave can be granted only when the order of acquittal prima facie appears unsustainable.

10. This Court should also bear in mind that on the evidence on record, when two views are possible, the view in favour of the accused merits acceptance. As rightly held by the Sessions Court, the burden under Section 138 of the Negotiable Instruments Act, can be discharged by the accused by preponderance of probability, as held by the Supreme Court in Rangappa Vs Sri Mohan [2010 (4) CTC 118].

11. It is the case of the complainant that she had given a hand loan of Rs.5,00,000/- by cash to the accused on 24.04.2004, but, it is the defence of the accused that the complainant had no means to give such a huge amount as loan and that she herself raised loans for her business purposes from two banks in and around that time. It has been admitted by the complainant that her husband and the accused were partners in C.P.Udyog and after closure of the said partnership, the records of the Firm were available with her husband. The witnesses examined by the accused have stated that the complainant had taken loan for running C.P.Udyog Partnership Firm in and around the time when the alleged loan of Rs.5,00,000/- was given to the accused. In fact, Vincent, Manager of South Indian Bank (D.W.1), where the complainant maintained her account, has filed her accounts statement, which shows a very grim financial picture. Further, one Selvaraj (D.W.2) has stated that the complainant had borrowed a sum of Rs.3,50,000/- from him and had given a power of attorney for dealing with the property owned by her. All this clearly shows that the complainant had no means to give such a huge loan and with the records of the Firm, from which the accused had resigned, that is available with the complainant's husband, the cheque of the accused has been filled and complaint filed.

12. The lower appellate Court has gone into these facts deeply and has held that the accused has satisfactorily discharged the burden under Section 138 of the N.I. Act, which finding, in the considered opinion of this Court, appears sound and does not require any interference.

In the result, this Leave Application stands dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

asi/gya

To

1. The Additional District Judge
(Fast Track Court-III), Coimbatore.

2. The Judicial Magistrate No.1,
Coimbatore.

+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.83757

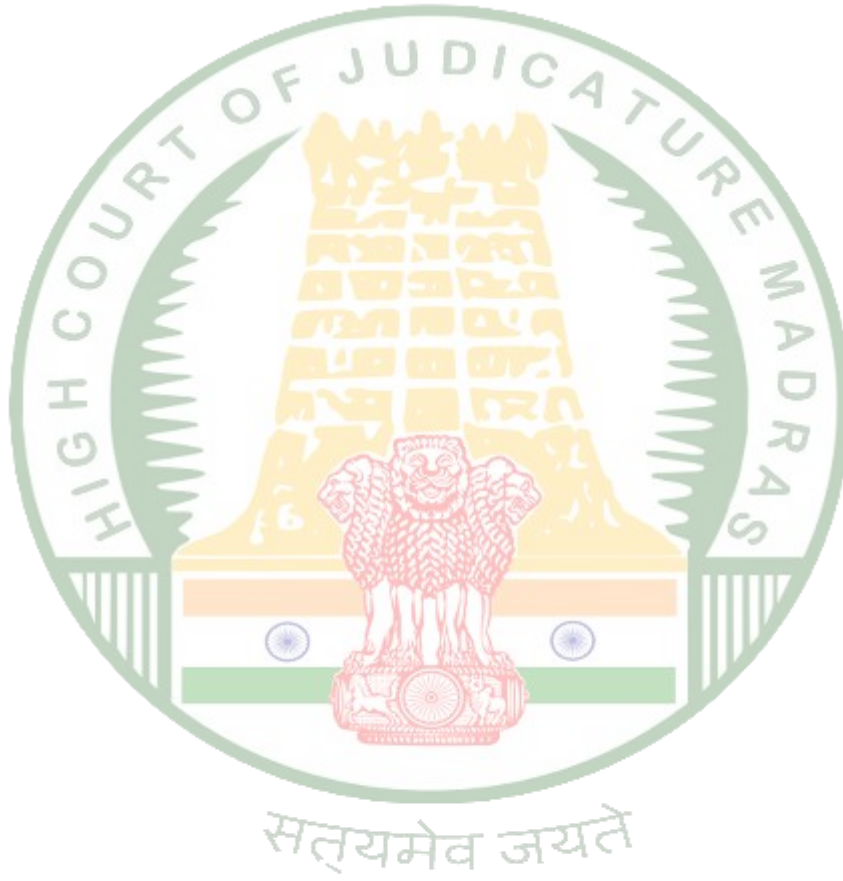
Copy To:

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

CRL.R.C.No.455 of 2011

CP (CO)

rrs 28/01/2019



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