



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
29.01.2018	06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.R.C.(MD)No.854 of 2017

and

Crl.M.P.(MD).No.10494 of 2017

R.Manimehalai

: Petitioner/Accused

Vs.

Banumathi

: Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code against the Judgment dated 11.09.2017 made in Crl.A.No.104 of 2017, on the file of the Additional Sessions Court, Karur, confirming the Judgment dated 17.06.2017, made in C.C.No.147 of 2015, on the file of the Judicial Magistrate Fast Track Court, Alagu Karur.

For Petitioner

: Mr.V.Sitharandhas

For Respondent

: Mr.N.Kamesh

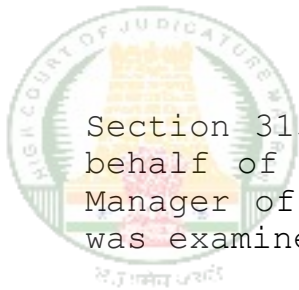
For Mr.R.Devaraj

O R D E R

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. It is the case of the complainant that the accused borrowed a sum of Rs.7,00,000/- [Rupees Seven Lakhs only] from the complainant promising to repay the amount within a period of two months. In discharge of the said liability, the accused gave a cheque [EX-P1] post dated 26.12.2013, bearing No.111825, for a sum of Rs,7,00,000/- in favour of the complainant. The complainant presented the cheque on 26.12.2013 and the same was dishonoured by memo, [EX-P2], following which the complainant issued a statutory notice, dated 31.12.2013 [EX-P3] to the accused, which was received by the accused on 02.01.2014, vide postal acknowledgment card [EX-P4]. The accused issued a reply notice dated 17.03.2014, [EX-P5], repudiating the debt. Therefore, the complainant initiated the prosecution in C.C.No.147 of 2015, before the Judicial Magistrate [Fast Track Court[, Alagu Karur, under Section 138 of the Negotiable Instruments Act, 1881, against the accused.

3. On the appearance of the accused, she was furnished with a copy of the complaint and she was questioned about the substance of the case, which she denied. In order to prove the case, the complainant examined herself as PW-1 and marked five exhibits. The accused was questioned about the incriminating circumstances under



Section 313 of the Code of Criminal Procedure, which she denied. On behalf of the accused, one witness, namely, Ganeshamoorthy, Senior Manager of Syndicate Bank, in which the accused was having account, was examined as DW-1 and one exhibit was marked.

4. After considering the evidence adduced by both sides, the Trial Court, by Judgment dated 17.06.2017, in C.C.No.147 of 2015, convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced her to undergo simple imprisonment for four months and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one month. Challenging the said conviction and sentence, the accused filed Crl.A.No.104 of 2017 before the Additional Sessions Court, Karur and the same was dismissed, on 11.09.2017, aggrieved over which, the accused has filed the present Criminal Revision Case.

5. Heard Mr.V.Sitharanjandas, learned counsel appearing for the accused and Mr.N.Kamesh, learned counsel, representing Mr.R.Devaraj, learned counsel on record appearing for the complainant.

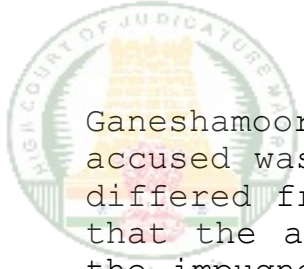
6. Mr.V.Sitharanjandas, learned counsel appearing for the accused, submitted that the complainant had not proved the debt at all; that the complainant's sister - Mallika is an usurious money lender; that the father of the accused had borrowed a sum of Rs.3,00,000/- from the said Mallika; and that the impugned cheque was issued as security towards the said debt.

7. The learned counsel also contended that the signature in the cheque differed from the signature with the bank and therefore, the cheque was dishonoured on the ground that the signature did not tally and therefore, the prosecution under Section 138 of the Negotiable Instruments Act, 1881, cannot be maintained.

8. Per contra, Mr.N.Kamesh, learned counsel, representing Mr.R.Devaraj, learned counsel on record appearing for the complainant, refuted the said contentions.

9. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

10. While exercising the revisional jurisdiction under Section 397 of the Code of Criminal Procedure, this Court should not, normally, re-appreciate the evidence, since two Courts have already appreciated the evidences on record and have given concurrent Judgments. Of course, the power of this Court to reappraise the evidence is always available. It is true that the impugned cheque was returned on two grounds, namely, a].insufficient funds b]. the signature of the drawer differs. On receipt of the statutory notice, dated 31.12.2013, [EX-P3] from the complainant, the accused has sent a belated reply notice, dated 17.03.2014, [EX-P5], in which also the accused did not take the plea that her signature has been forged in the cheque. She has taken a plea that the impugned cheque was issued by her for a different debt. The accused took pains to examine



Ganeshamoorthy, Senior Manager of Syndicate Bank, in which the accused was having account, to say that the signature in the cheque differed from the specimen signature with the bank. This only shows that the accused had deliberately put her signature differently in the impugned cheque with the intention of cheating the complainant. However, a charge of cheating has not been framed against the accused. This conduct of the accused in giving the cheque by affixing her signature differently is relevant under Section 8 of the Indian Evidence Act, 1872. The presumption under Section 139 of the Negotiable Instruments Act, 1881, comes into force, when once the cheque has been issued by the accused for the debt in question. Of course, this is a rebuttable presumption and the same can be dislodged by the accused by preponderance of probabilities and not by proof beyond reasonable doubt, as held by the Supreme Court in Rangappa vs. Sri Mohan, [(2010) 11 SCC 441]. In this case, the accused has failed to discharge her burden even by preponderance of probabilities. She was trying to take advantage of the difference in signature in order to wriggle out of the prosecution. The accused had not even given any complaint against the said Mallika or anyone else that they are demanding exorbitant interest under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

11. In such view of the matter, this Court is of the view that there are no infirmities in the findings given by the Courts below warranting interference. In the result, the Criminal Revision Case is devoid of merits and it is, accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Additional Sessions Court, Karur.
2. The Judicial Magistrate Fast Track Court, Alagu Karur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to : The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1cc to Mr. R. DEVARAJ, Advocate, SR. 46676
+1cc to Mr. V. SITHARANJANDAS, Advocate, SR. 46332

Cr1.R.C. (MD) No. 854 of 2017
06.02.2018