Bail Slip

The Accused namely L.Malika W/O Lakshmanan, 4A-1 Sreenivasa Nagar, Uppilipalayam, Coimbatore was released on bail made in M.P.No.2/2011 in Crl.Revision No.212/2011 dated 14/02/2011 (CC No.65/2006 on the file of Judicial Magistrate Court No.1 Pollachi as modified in Crl.A.No.144/2010 on the file of the Additional District Judge, Cum Fast Track Court No.III, Coimbatore) on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Revision No.212 of 2011

L. Mallika ... Petitioner

Vs

C. Ramachandran ... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. To set aside the Judgment dated 28.01.2011 made in Crl.A.No.144 of 2010 by the Additional District Court cum Fast Track Court No.III, Coimbatore confirming and modifying the Judgment dated 15.06.2010 made in CC No.65 of 2006 by the Judicial Magistrate Court No.I, Pollachi.

For Petitioner : Mr. R. Asokan

For Respondent : Mr. C. Veeraraghavan

O R D E R

This Criminal Revision is directed against the concurrent findings of the Courts below.

2. The case against the Revision Petitioner is that she borrowed a sum of Rs.3,00,000/- as a loan from the respondent, to meet out her family expenses and business purpose after executing a promissory note on 25.07.2004. To discharge the debt partially, she gave a cheque for Rs.2,00,000/-. When, the said cheque was presented by the respondent for collection on 30.08.2005, the same was returned as unpaid due to “insufficient funds”. The Statutory notice dated 05.09.2005 sent to the Revision petitioner through Certificate of posting was received

by her on 06.09.2005, whereas the Statutory notice sent through Registered post was returned as unclaimed. Even after receipt of the Statutory notice, the Revision Petitioner herein has not settle the amount. Hence, Private Complaint filed against the Revision Petitioner/ accused for the offence under Section 138 of Negotiable Instrument Act.

3. The trial Court after taking into consideration the evidence adduced and the documents placed before it, has convicted the Revision Petitioner/ accused under Section 138 of Negotiable Instruments Act and sentenced her to undergo one year simple imprisonment and imposed a fine of Rs.5,000/- indefault two months simple imprisonment.

4. Challenging the said Judgment, the Revision Petitioner/ accused had preferred an appeal before the Additional District Court, Fast Track Court No.III, Coimbatore. The lower Appellate Court after re-appreciating the evidence, considering the gender, age of the accused and her family circumstances, modified the sentence of imprisonment from one year to three months simple imprisonment without alteration in fine amount. Against the said order of the lower Appellate Court, the present Criminal Revision is preferred.

5. The learned counsel appearing for the Revision Petitioner raise two grounds challenging the findings of the Courts below. The first ground is that the Statutory notice issued to the accused was not delivered to her. There is no evidence to show that the accused received the Statutory notice. The second ground raised by the Counsel for the Revision Petitioner is that the borrowal of Rs.3,00,000/- as against the Promissory Note Ex.P.1 not been proved by the complainant in the manner known to law. The complainant has not placed any material to show his source of income to advance loan of Rs.3,00,000/-. Admittedly, the complainant is a farmer. He alleges that the Revision Petitioner/ Accused borrowed a sum of Rs.3,00,000/- on 25.07.2004 and to discharge the debt partially, she issued the said cheque for Rs.2,00,000/- on 30.08.2005. If so, the complainant ought to have produced evidence to substantiate his source of income and execution of Promissory Note. Since, the complainant has failed to place the material evidence to substantiate the factum of borrowing against the Promissory Note as well as his source of income, the courts below ought to have dismissed the complaint.

6. Per contra, the learned Counsel appearing for the respondent/ complainant would submit that the Revision Petitioner herein is known to the complainant for a long time. To meet the family expenses and her business purpose, the

Revision petitioner has borrowed a sum of Rs.3,00,000/-, she executed Promissory Note dated 27.05.2004. To discharge the debt in part, a cheque dated 30.08.2005 for Rs.2,00,000/- was issued. When it was presented for collection, it returned with endorsement "insufficient funds". The Statutory notice was sent through registered post as well as certificate of posting. The Postal cover sent under registered post returned with endorsement "Intimation given. unclaimed", whereas the notice sent under certificate of posting did not return, indicating the accused has received the same. The accused has not paid the cheque amount despite Statutory notice or immediately atleast after receiving summons in the Criminal complaint. Therefore, the Courts below have rightly taken into consideration the Promissory Note which was marked as Ex.P.1 and the cheque Ex.P.2 along with the return postal cover Ex.P.6 and the bank memo Ex.P.4 and convicted the accused. The lower Appellate Court, considering the gender and other aspects has modified the term of imprisonment, reduced the sentence from one year to three months. Inspite of several offer to settle the matter amicably, the Revision Petitioner has not come forward. Hence, the learned Counsel submitted that the Revision petition is liable to be dismissed.

7. Heard the Counsels. Records perused.

8. The Promissory note for borrowing Rs.3,00,000/- has been marked as Ex.P.1. The subject cheque is marked as Ex.P.2. It is a fact that the witnesses to the promissory note not been examined by the complainant. However, the matter before the Criminal Court under consideration is whether the cheque Ex.P.2 was issued for discharge of legally enforceable debt. The complainant has marked Ex.P.1 Promissory Note to prove that the legally enforceable debt existed. Only for collateral purpose, Ex.P.1 has been marked. Therefore, having proved that the cheque was issued to discharge legally enforceable debt, the burden is on the accused to discharge the burden. Ex.P.1 Promissory Note and Ex.P.2 Cheque are prima facie proof for lending and borrowing. After execution of Promissory Note and cheque, if the executant wants to prove the negative the burden is on the accused, mere questioning the source and denial of borrowing not sufficient to discharge the burden.

9. The evidence before this Court does not indicate the accused has discharged the said presumption. The Statutory notice sent by registered post with acknowledgment has been returned, just because the accused has refused to claim the notice. Therefore, it has deemed to be proper service.

10. In the light of the above discussions, this Court finds no error or illegality either in the findings or in the sentence of the Courts below. Hence, this Criminal Revision is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
   Coimbatore.

2. The Chief Judicial Magistrate Court,
   Coimbatore.

3. The Judicial Magistrate Court No.I,
   Pollachi.

4. The Public Prosecutor,
   High Court, Madras.

5. The Additional District Judge Cum Fast Track Court-III,
   Coimbatore.

+1cc to Mr.R.Asokan, Advocate Sr.25550

Criminal Revision No.212 of 2011

spd[co]
srg 25/04/2019