

Bail Slip

The Appellant/Accused, namely Dhanalakshmi aged 39 years W/o, Saravanan was already directed to be released on bail as per order dated 28.11.2012 made in CRL MP.NO.1/12 IN CRL A.NO.1260/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

CRL.R.C.No.1260 of 2012

Dhanalakshmi ... Petitioner / Accused

Vs.

R.Karunanithi ... Respondent/Complainant

Criminal Revision filed under Section 397 read with 401 Cr.P.C to set aside the judgment in C.A.No.02/2012 dated 29.08.2012 on the file of Principal District and Sessions Judge, Dharmapuri, confirming the judgment of S.T.C.No.137 of 2011 dated 18.01.12 on the file of Judicial Magistrate (FTC), Dharmapuri.

For Petitioner : Ms.Premalatha

For Respondent : Mr.R. John Sathyan

ORDER

This criminal revision is directed against the judgment of the Principal District and Sessions Judge, Dharmapuri in C.A.No.02/2012 dated 29.08.2012 confirming the conviction and sentence passed by the Judicial Magistrate (FTC), Dharmapuri dated 18.01.12 in S.T.C.No.137 of 2011.

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

3. It is the case of the complainant that the accused and her husband Saravanan were close friends and they wanted a hand loan of Rs.5,00,000/- for the expansion of their hospital. Admittedly, the accused is doctor by profession and her husband is an Engineer. Accordingly, the complainant gave that Rs.5,00,000/- on 01.11.2010 and on that day itself, the

accused gave a post-dated cheque for Rs.5,00,000/- drawn on ICICII Bank, Erode Branch dated 12.12.2010 (Ex.P1). At the request of the accused, the complainant did not present the cheque on 12.12.2010 and instead presented the cheque in the last week of January 2011. The cheque returned with the endorsement "Insufficient Funds" vide return memo (Ex.P2) dated 04.02.2011. The complainant issued a statutory demand notice dated 07.02.2011 (Ex.P3) which was received by the accused on 08.02.2011 by postal acknowledgement card (Ex.P4). The accused did not give any reply to the notice nor make the payment. Therefore, the complainant initiated a prosecution in S.T.C.No.137 of 2011 before the Fast Track Court, Magisterial Level, Dharmapuri under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

4. The complainant examined himself as PW1 and marked Exs.P1 to P4. When the accused was questioned under Section 313 Cr.P.C, she denied the allegations. On behalf of the accused, one Syed Fairose Deen was examined as DW1.

5. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 18.01.2012, in S.T.C.No.137 of 2011, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for one year and pay a compensation of Rs.5,00,000/-, in default to undergo simple imprisonment for a period of three months. The appeal in C.A.No.02 of 2012, that was filed by the accused was dismissed by the District Court, Dharmapuri on 29.08.2012, aggrieved by which the accused has filed the present revision petition under Section 397 r/w. 401 Cr.P.C.

6. Heard learned counsel for the petitioner/accused and learned counsel for the respondent/complainant.

7. The learned counsel for the petitioner/accused submitted that the complainant is an advocate by profession and it is highly improbable that he would have given the hand loan of Rs.5,00,000/- without obtaining any document from the accused. She also contended that, both the Courts below have failed to appreciate the evidence of Syed Fairose Deen (PW1) in the right perspective.

8. Per contra, learned counsel for the respondent/complainant submitted that in the evidence, the complainant has clearly stated that the accused and her husband were his close friends and on mere trust, he gave the loan of Rs.5,00,000/- because they wanted money to expand their hospital and that they told the complainant that they asked for a loan from the bank and as soon as the loan is received, they would return the hand loan of Rs.5,00,000/-

9. At this juncture, it may be relevant to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court

[See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

10. This Court perused the evidence on record.

11. The complainant has spoken about the fact that he gave Rs.5,00,000/- to the accused on 01.11.2010, since the accused and her husband were his close friends and that they wanted money for expanding their hospital building and they represented to him that they have approached a bank for loan and that they would return the hand loan on receipt of the bank loan; he has also stated that the accused gave a post-dated cheque (Ex.P1) bearing the date 12.12.2010, but the same was presented by him only in the last week of January 2011 and that was also returned unpaid. He has also spoken about the issuance of the statutory demand notice (Ex.P3) and receipt of the same by the accused vide postal acknowledgement (Ex.P4) on 08.02.2011. In the cross-examination of the complainant (PW1) by the defence, he has reiterated that he had given the loan since he knew the husband of the accused for 12 years and thereby got acquainted with the accused. He has specifically stated that he gave this loan in his office in the presence of another friend K.S.Ravi. The defence was not able to make any dent in the testimony of PW1. No explanation whatsoever was given either in the statement under Section 313 Cr.P.C or by way of suggestion to PW1 as to the circumstances under which the cheque drawn and signed by the accused came into the possession of the complainant.

12. This Court perused the original cheque (Ex.P1) and no discrepancy is apparent on its face. However, the accused examined one Syed Fairose Deen as DW1, who has stated that he is running a Shoe Mart and on 12.09.2010, the accused wanted a loan of Rs.2,50,000/- which the complainant said he would arrange, for which the complainant had taken two blank, but signed cheques from the accused, but neither arranged the loan nor returned the two cheques. In the cross-examination, he has stated that he knows the family of the accused for a very long time and further stated that the accused had wanted loan for investing in their hospital which was run by her along with her husband. He has further stated that he knew about the complainant only in the year 2010 and does not know the friendship between the accused and the complainant prior to that.

13. Both the courts have disbelieved the evidence of DW1. The reason given by DW1 that the accused wanted a loan of Rs.2,50,000/- to be obtained by the complainant for which she gave two blank cheques has not even been suggested in the cross-examination of the complainant (PW1) nor stated when she was questioned under Section 313 Cr.P.C. Hence, this Court has no reason to differ from the findings of the two Courts below.

14. The learned counsel for the revision petitioner submitted that the sentence of one year simple imprisonment may be reduced taking into consideration the fact that the revision petitioner is a doctor by profession and a lady.

In the result, this Criminal Revision is partly allowed and the conviction of the revision petitioner stands confirmed. Accepting the submission of the learned counsel for the revision petitioner, the substantive sentence of one year simple imprisonment is reduced to 8 months simple imprisonment. The award of compensation and default sentence passed by the Courts below is confirmed. The period already undergone shall be set off. The trial Court is directed to secure the accused and commit her in prison for serving the sentence. Registry is directed to send the original records to the appellate Court and the trial Court forthwith. Any amount deposited shall be paid to the complainant. Even after the accused is remanded, a petition for compounding Under Section 147 of the Negotiable Instruments Act can be filed before the trial Court.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa
To

1. The Principal District and Sessions Judge
Dharmapuri

2. The Judicial Magistrate (FTC)
Dharmapuri.

3. The Deputy
Criminal Section, } Registrar, with a direction to send
High Court, Madras. } the original records to the
two Courts below forthwith.

4. The Public Prosecutor
Madras High Court, Chennai

+1cc to Mr.John Sathyan , Advocate SR.No. 93612

+1cc to Mr.R.Nelliyappan , Advocate SR.No. 93654

CRL.R.C.No.1260 of 2012