BAIL SLIP

The Petitioner/Appellant/Accused Namely A.Junaitha Rahman, S/o.A.M.E.Abdul Rahman, was directed to be released on bail as per order of this Court dated 03.02.2012 made in Crl.M.P.No.1/12 in Crl.R.C.No.156 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL REVISION CASE NO.156 OF 2012

A.Junaitha Rahman .. Petitioner/Appellant/Accused

/versus/

Mothichand .. Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records in C.A.No.72/2009 on the file of the District and Sessions Judge, Nagapattinam, set aside the judgment in C.A.No.72/2009 on the file of the District and Sessions Judge, Nagapattinam dated 02.12.2011 confirming the judgment and sentence in S.T.C.No.4113/2005 dated 09.11.2009 on the file of the Judicial Magistrate No.1, Mayiladuthurai and allow the revision.

For Petitioner :Mr.R.Ganesh Kumar

For Respondent :Mr.M.Arvind Kumar

O R D E R

This revision petition is directed against the concurrent finding of the Courts below holding the revision petitioner guilty of offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant is that the accused issued a cheuqe for Rs.3,00,000/- dated 23.05.2005 drawn on Indian Overseas Bank, Vadagarai Branch to discharge the loan available from the complainant. However, when the cheque was presented for collection, it was bounced with an endorsement “Account closed

on 05.07.2003". Statutory notice was issued by the complainant/respondent herein to the accused/petitioner herein on 27.05.2005 and the same was acknowledged by the accused on 31.05.2005. After receiving the notice, the accused neither replied the notice nor repaid the cheque amount. Hence, a complaint was filed before the Judicial Magistrate No.1, Mayiladuthurai by the complainant and the case was taken on file as S.T.C.No.4113 of 2005.

3. The case was contested by the accused on the ground that Ex.P1-cheque was not issued by the accused to the complainant. It was infact issued by her husband as as security for the loan he availed from the complainant earlier in the year 2003-2004. Her husband has cleared the debt in instalments. However, the complainant has misused the cheque issued as a security.

4. To fortify to her defence, the Branch Manager of the bank was examined as DW-1. Through this witness, she has marked two exhibits viz., EX.X1 and Ex.X2, which are the photocopy of the cheques issued in favour of Ramadoss and the complainant (PW-1) for Rs.1,45,000/- and Rs.25,000/- respectively. The photocopy of the plaint and written statement in O.S.No.25 of 2008 were marked as defence Exs.D1 and D2 to substantiate her defence that the complainant has initiated recovery proceedings by filing the suit.

5. The trial Court, after considering the rival submissions has held that the accused has admitted the execution of Ex.P1-cheque. The money transaction has not been disputed. She contends that the cheque was issued for the loan available by her husband and given only as a security. While so, the burden of proving that the loan already discharged is on the accused. Neither the deposition of DW-1 nor the exhibits relied on by the accused lends support to her case that the money borrowed was discharged and there was no existing liability. The trial Court has convicted the accused to undergo one year Simple Imprisonment and pay a fine of Rs.5,000/-. Out of which, Rs. 2,500/- was ordered to be paid as compensation to the complainant. Aggrieved by the finding of the trial Court, the accused has preferred appeal before the District and Sessions Court in C.A. 72 of 2009.

6. The lower appellate Court, while considering the grounds of appeal had found no substance in the appeal. Relying upon the judgment of the Hon'ble Supeme Court rendered in Rangappa v. Sri Mohan reported in 2010 (4) CTC 118, the lower appellate Court had confirmed the conviction and sentence passed by the trial Court.

7. The learned counsel appearing for the revision petitioner would submit that the lower appellate Court, without properly

appreciating the facts elucidated during the cross examination of PW-1 has blindly confirmed the trial Court judgment. The cheque Ex.X1 for Rs. 1,45,000/- issued by the accused in favour of one Ramadoss was towards the debt incurred by her husband and that cheque was issued in the name of Ramadoss as per the dictum of the complainant. Likewise, Ex.X2-cheque was issued in favour of PW-1 the complainant for Rs.25,000/-. These payments were not properly considered by the Courts below, which has led to miscarriage of justice.

8. Heard both sides and perused the records.

9. After giving anxious consideration to the rival submissions, this Court finds that through Ex.D1, Ex.D2, Ex.X1 and Ex.X2 the accused has probabilied the fact that there was money transaction between the complainant and her husband as well as with the accused. The suit filed by the complainant and the written statement have nothing to do with the present cheque. The payment of Rs.25,000/- in favour of the complainant vide Ex.X2 is dated 27.03.2008. The other cheque, which was marked as Ex.X2 indicates that the accused has paid a sum of Rs.1,45,000/- to one Ramadoss. Though it is contended that the cheque was issued to Ramadoss, as per the direction of the complainant, to prove the same, neither Ramadoss nor any other independent witness was examined by the accused. The subject matter of the present complaint is relating with the cheque dated 23.05.2005, whereas the cheque Ex.X1, dated 27.03.2008 was issued much after the subject cheque. Therefore, the attempt made by the accused to probabilise the case and to discharge the reverse burden has been miserably failed. In fact, the evidence relied on by the accused viz., Exs.D1 and D2 and Exs.X1 and X2 only strengthen the case of the complainant that there was money transaction and for discharge of the debt, the subject cheque was issued. Having admitted the cheque was issued for loan transaction, the burden is on the accused to discharge that on the date of issuance of cheque, there was no enforceable debt. Having failed to discharge the said burden, this Court finds no perversity in the finding of the Courts below.

10. As far as the period of imprisonment is concerned, it is submitted by the learned counsel appearing for the revision petitioner that the revision petitioner is an old lady presently aged about 60, so, she need not be burdened with harsh punishment.

11. I find some force in his submissions. Therefore, while confirming the conviction, the sentence is modified to the effect that the petitioner shall undergo Simple Imprisonment for a period of three months. The fine of Rs.5,000/- in which the compensation of Rs.2,500/- to be paid to the complainant shall stand confirmed.

12. Accordingly, this Criminal Revision Case is disposed of. The period of sentence already undergone by the accused shall be given set off. The respondent police is directed to secure the accused/revision petitioner to undergo the remaining period of sentence as modified in the revision by this Court.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The District and Sessions Judge, Nagapattinam.
2.The Judicial Magistrate No.1, Mayiladuthurai.
3.The Chief Judicial Magistrate, Nagapattinam.

+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.29961

Crl.R.C.No.156 of 2012

SR(CO)
CS/13/05/2019