

Bail Slip

The Petitioner /Accused,namely Mrs.M.Deepa D/o. Mani was directed to be released on bail as per order of this court dated 21.12.2012 and made in MP.NO.1/12 IN CRL RC No.1561 of 2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Revision Case No.1561 of 2012

Mrs.M.Deepa ... Petitioner/ Appellant /Accused

/versus/

M.Ashok Kumar .. Respondent/ Respondent /Complainant

Criminal Revision Case filed under Section 397 & 401 of the Criminal Procedure Code praying to call for the records and set aside the conviction imposed in judgment passed on 20.02.2012 in C.C.No.221 of 2011 on the file of Judicial Magistrate,FTC at Magisterial Level-II, Coimbatore and confirmed on 12.09.2012 in C.A.No.86 of 2012 on the file of the 5th Additional District and Sessions Court, Fast Track Court No.3, Coimbatore.

For Petitioner :Mr.B.Vijayakumar

For Respondent :Mr.G.B.Saravanabhavan

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2. At the outset, the learned counsel appearing for the respondent would submit that while suspending the

sentence, this Court imposed conditions upon the revision petitioner to deposit a sum of Rs.30,000/- to the credit of C.C.No.221 of 2011 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore within a period of three weeks from the date of receipt of a copy of the order and to execute a bond for Rs.15,000/- with two sureties. Though this order was passed on 21.12.2012, till date the revision petitioner has not complied with the conditions. Therefore, she has lost her right of representing the petition.

3. The learned counsel appearing for the revision petitioner would submit that the matter has been kept pending for nearly 6 years since 2012. So, without advertng to the objection raised by the learned counsel for the respondent regarding the non-compliance of the condition, this Court may look into the merits of the revision petition and pass appropriate orders.

4. It is the case under Section 138 of the Negotiable Instruments Act, 1881. The revision petitioner herein has borrowed a sum of Rs.1,00,000/- from the respondent on 14.06.2009. She has promised to pay the said amount within a period of two months. On 31.08.2009, she issued a cheque drawn from her account maintained in ICICI bank, Coimbatore. When the cheque was presented for collection, it was returned for "insufficient fund". Therefore, the complainant after issuing the statutory notice filed the private complaint.

5. The revision petitioner contested the complaint by denying the liability. The trial Court, considering Exs.P1 to P5, depositions of the complainant [PW-1] and accused [DW-1] and Exs.D1 to D3 marked on her behalf, held that the cheque was issued by the accused to discharge the legally enforceable debt and therefore, liable to be punished the accused under Section 138 of the Negotiable Instruments Act, 1881. Accordingly, the trial Court has sentenced him to undergo 6 months Simple Imprisonment and pay a fine of Rs.2,000/- in default, to undergo one month Simple Imprisonment.

6. Aggrieved by the conviction and sentence passed by the trial Court, the accused has preferred the appeal before the 5th Additional District and Sessions Court, Coimbatore in C.A.No.86 of 2012.

7. The lower appellate Court has re-appreciated the evidence and found that the defence taken by the accused that she was not put to proper notice before filing the complaint and the cheque was stolen from her father's custody, were found to be incorrect and therefore, confirmed the judgment of the trial Court.

8. In this revision, the accused has contended that the finding of the Courts below is illegal and perverse. The trial Court has failed to properly appreciate the testimony of the accused examined as DW-1 and three exhibits marked on her behalf. The Courts below failed to consider that the complainant is totally stranger to the accused. The statutory notice alleged to have been sent to the accused was not served, since the complainant has not furnished correct address. For the failure to comply the mandatory condition of causing notice before launching the complaint, the Court below ought to have dismissed the complaint.

9. The first contention of the revision petitioner is that the cheque was not issued by the accused to discharge any debt. In her evidence, she has deposed that she saw the complainant for the first time, after demise of her father. When the complainant along with one Kalisamy came to her house and informed her and her mother that the deceased father had borrowed loan from him. Whereas the complainant has deposed that he knows the accused through Kalisamy and only through him, he advanced loan to the accused. The return memo of her bank indicates that the cheque is returned for insufficient fund. The cheque has been drawn by the accused in favour of the complainant, the same has been returned for insufficient fund. The presumption under Section 139 of the Negotiable Instruments Act, 1881 is against the accused. Therefore, since she failed to discharge the presumption, the Court below has rightly held against the accused.

10. As far as the non-receipt of the statutory notice postal acknowledgment marked as Ex.C1 indicates that the accused has received the notice on 07.12.2009. Therefore, it is incorrect to content that she has not received the notice.

11. From the evidence, the Courts below have rightly appreciated the facts and law and held the accused guilty. This Court finds that both her defence that the cheque was not given by her to discharge any debt and she did not receive the statutory notice, are false and disproved through the evidence. Hence, this Court finds no merits in the revision petition to interfere with the finding of the Courts below and this Revision Petition is liable to be dismissed.

12. Accordingly, this Criminal Revision Case is dismissed. The judgment of the 5th Additional District and Sessions Judge, Fast Track Court No.3, Coimbatore in C.A.No.86 of 2012 dated 12.09.2012 is confirmed. Bail bond if any executed by the accused shall be cancelled. The period of sentence already undergone by the accused shall be given set off. The Police is directed to secure the accused and remand him into prison through Court to undergo the remaining period sentence.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The 5th Additional District and Sessions Judge, Fast Track Court No.3, Coimbatore.
- 2.Judicial Magistrate FTC at Magisterial Level-II, Coimbatore. (2 Copies)
3. The Public Prosecutor,
High Court, Chennai - 104.

+1cc to Mr. G.B.Saravanabhavan, Advocate SR.No. 34256
+1cc to Mr. B.Vijayakumar, Advocate SR.No. 34273

Cr1.R.C.No.1561 of 2012

A.SK(03/06/2019)