

BAIL SLIP

The Appellant herein/Accused viz., G.Kalavathy W/O. Suresh Babu, was directed to be released on bail as per the order of this court dated 09.03.2018 made in CrI.MP.No.3685/2018 in CrI.Rc.No.310/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.310 of 2018

G.Kalavathy ... Petitioner/Respondent/Accused

Vs

P.Vijayakanth ... Respondent/Appellant/Complainant

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, against the Judgment and sentence passed against the petitioner herein in C.A.No: 1 of 2014 dated 02.09.2015 by I Addl. Sessions Judge, Tiruvallur allowing the Appeal and reversing the Judgment of the Trial Court in C.C.No: 93 of 2012 dated 22.10.2013 passed by the Fast Track Court, Magisterial Level, Tiruvallur.

For Petitioners : Mr.L.Rajasekar

For Respondent : Mr.P.Manikannan

O R D E R

This Criminal Revision case has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the Judgment and sentence passed against the petitioner herein in C.A.No: 1 of 2014 dated 02.09.2015 by allowing the Appeal and by reversing the Judgment of the Trial Court in C.C.No: 93 of 2012 dated 22.10.2013 passed by the Fast Track Court, Magisterial Level, Tiruvallur.

2 The case of the respondent/complainant is that the revision petitioner/accused borrowed a sum of Rs.1,50,000/- on 12.05.2011 for her husband's business and issued a cheque bearing No.922652. The respondent/complainant presented the said cheque on 04.11.2011 in M/s Tamil Nadu Mercantile Bank Limited, Tiruvallur and the said cheque was returned on the same day. Therefore, the respondent/complainant issued a statutory notice on 29.11.2011 to

the petitioner and the said notice was received by the petitioner/accused on 05.12.2011. After the receipt of the notice also, the petitioner has not paid the amount demanded in the statutory notice, neither not sent any reply to the statutory notice.

3 Therefore, the respondent/complainant filed a private complaint under Section 200 Cr.P.C., before the learned Judicial Magistrate, Fast Track Court, Tiruvallur for the offence under Section 138 of the Negotiable Instrument Act.

4 The learned Judicial Magistrate taken up the complaint on file and issued summons to the petitioner/accused. In order to prove the case of the respondent/complainant, the respondent was examined himself as P.W.1 and on his side seven exhibits were marked. After completing the evidence, the petitioner/accused examined three witnesses and marked one document.

5 The learned Judicial Magistrate after completing the enquiry and also perusing the entire records, dismissed the complaint. As against the dismissal of the complaint, the respondent/complainant filed a criminal appeal before the learned Sessions Judge, Thiruvallur in CrI.A.No. 1 of 2014.

6 After hearing the arguments made by both the counsel, the learned I Additional Sessions Judge, Thiruvallur, set aside the Judgment passed by the learned Judicial Magistrate and allowed the appeal by convicting the accused for the offence under Section 138 of Negotiable Instruments Act, by imposing punishment of sentence to undergo imprisonment for a period of six months and to pay the cheque amount of Rs.1,50,000/- as compensation to the respondent/complainant in default to undergo one month simple imprisonment. As against the said judgment, the accused has preferred the present Criminal Revision.

7 The learned counsel appearing for the petitioner/accused would submit that though the learned Magistrate rightly appreciated the contents and dismissed the complaint. Whereas the learned I Additional Sessions Judge, Thiruvallur has not considered the fact that husband of the petitioner/accused taken the cheque which was given by the respondent/complainant and she had illegal intimacy with one Gowri, spent the money and also lost his business. Since, the accused is working as a teacher and he threatened her not to reveal the fact. Though, the learned Magistrate has appreciated the above facts and the Appellate Court without considering the above aspects dismissed the appeal and confirmed the judgment of the Magistrate.

8 The learned counsel for the respondent/complainant would submit that the witness of the petitioner/accused has clearly stated that the accused has only issued a cheque to the respondent/complainant and further the petitioner/accused has taken the contradictory stand at one place, that her husband stolen the cheque and issued to the respondent/complainant. In another places, she has stated that her husband threatened and received the cheque and issued to the respondent/complainant. Therefore, the learned Magistrate failed to appreciate the witness of the accused and the Appellate Court rightly appreciated the oral and documentary evidences and reversed the judgment and convicted the accused. Hence, the learned counsel prays for dismissal of the revision.

9 Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on records.

10 Considering the above facts and circumstances, the signature found in the cheque is not disputed. The case of the petitioner/accused is that her husband had illegal intimacy with one Gowri, her husband has taken the cheque given to the respondent/complainant. He borrowed money from several persons against her will and wish her husband taken away the cheque and therefore, she gave a complaint before the police and at that time, the police also enquired the matter and her husband has given a letter and undertaking to repay the amount to the respondent/complainant. Therefore, the revision petitioner is liable to pay the amount. Now, the husband is not living with her, she eloped with said Gowri. Therefore, she is not liable for any prosecution. But admittedly, the signature is admitted and there is an evidence of DW1. D.W.1 had clearly stated that the accused received the money in his presence from the complainant and the defence witness itself has stated that the accused received the money in his presence. However, contended by the learned counsel appearing for the respondent/complainant that the revision petitioner/accused has taken the inconsistency stand at one place, she has stated that her husband stolen her cheque without her knowledge. In the proof of affidavit, she has stated that her husband obtained the cheque by threatening her. It is the dispute between the husband and wife, when DW1, the witness of the defence has admitted. Once the witness himself has stated that the accused received the money in his presence from the complainant and the accused also admitted the signature found in the cheque.

11 Therefore, under these circumstances, it is the statutory presumption that, the cheque is issued only for discharging the legally enforceable debt or liability. Therefore, the First Appellate Court, as a fact finding Court has rightly appreciated the entire evidence independently and drawn the legal presumption

under Sections 118 & 139 of Negotiable Instrument Act and found that the accused has not rebutted the presumption. However, the Appellate Court held that the admission is the best piece of evidence. Further, the signature is admitted and the presumption has not been rebutted, in the manner known to law. This Court is a Revisional Court cannot sit in the arm chair of the Appellate Court and re-appreciate the entire evidence.

12 On reading of the entire evidence on record and judgment of the learned Magistrate, Tiruvallur and the Judgment of the Appellate Court, this Court finds that though the learned Magistrate has failed to appreciate the evidence, the Appellate Court is the fact finding Court has rightly appreciated the facts and also legal principles that D.W.1 has admitted in his evidence that the accused received the money in his presence. In Section 313 proceedings also, the petitioner stated that the disputed cheque was stolen by her husband. The court can draw the legal presumption under Sections 118 & 139 of Negotiable Instrument Act. The Revision petitioner/accused has to rebut the presumption in the manner known to law. As already stated, from the admission made by the defence witness and as well as by the accused, the signature found in the cheque is that of the accused. However, considering the facts and circumstances of the case, the accused being a lady and also she is working as a teacher, in order to meet ends of justice, the sentence of imprisonment imposed by the Courts below has to be necessarily modified.

13 Accordingly, the sentence imposed on the accused i.e., imprisonment for a period of six months is set aside and the compensation amount is enhanced from Rs.1,50,000/- to Rs.3,00,000/-, in default, to undergo simple imprisonment for a period of six months. It is submitted by the learned counsel for the petitioner that a sum of Rs.75,000/- (Rupees Seventy thousand) has already been deposited by the petitioner. Hence, the petitioner/accused is directed to pay the enhanced compensation amount i.e. Rs.3,00,000/- after deducting the amount, which has already been deposited by her.

14 In the result, the criminal revision case is dismissed as far as conviction made by the trial Court is concerned and the sentence of imprisonment and fine amount alone modified to the extent as stated above.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

sbn/vkr

To

1.The I Additional Sessions Court,
Thiruvallur.

2.The Fast Track Court, Magisterial Level,
Tiruvallur.

3 The Chief Judicial Magistrate, Thiruvallur[for information]

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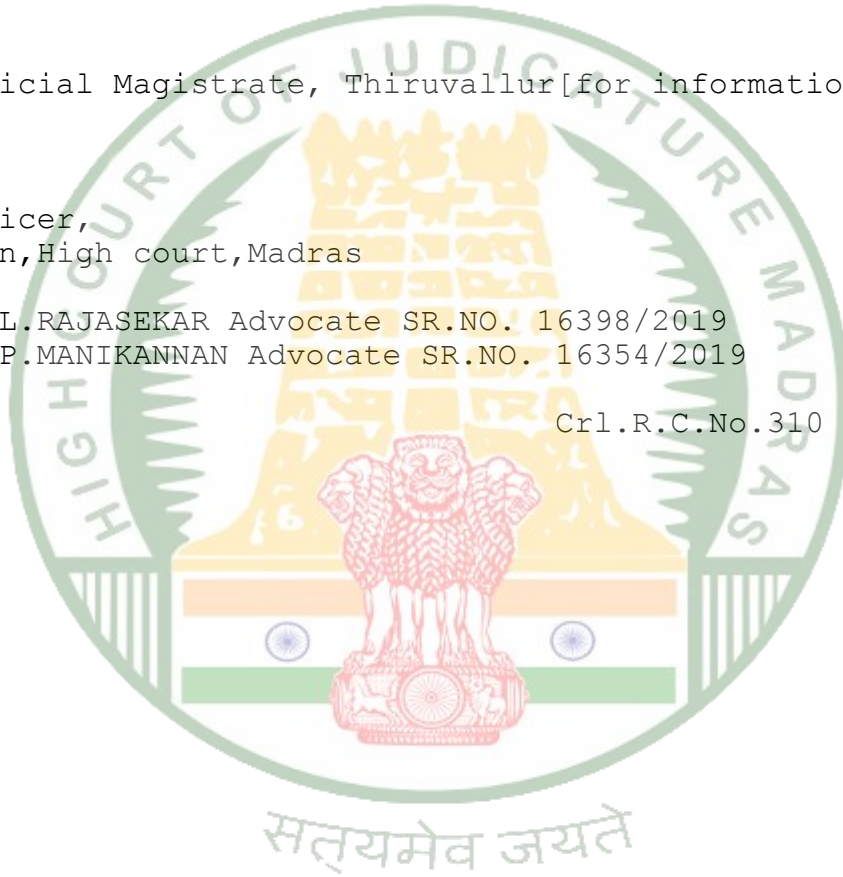
The section officer,
Criminal Section,High court,Madras

+2 cc to MR.L.RAJASEKAR Advocate SR.NO. 16398/2019

+1 cc to MR.P.MANIKANNAN Advocate SR.NO. 16354/2019

Cr1.R.C.No.310 of 2018

ssv(co)
RD 08/06/2019



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