

BAIL SLIP

The petitioner namely J.Helen Vidya, D/o.M.Jebamani accused in S.T.C No.108/2016 on the file of the Judicial Magistrate, Fast Track Court, Magisterial level, Tiruvallur dated 13.10.2017 was directed to be released on bail as per order of this Court dated 24.07.2018 made in CrI.M.P.9798/18 in CrI.R.C.853/18.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.853 of 2018 and
CrI.M.P.No.9799 of 2018

J. Helen Vidya ...Petitioner/Appellant/Accused

-Vs-

V.B.Dhanalakshmi ...Respondent/Respondent/Complainant

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 27.04.2018 passed in C.A.No.160 of 2017 by the learned Principal District and Sessions Judge, Thiruvallur, by partly allowing the order dated 13.10.2017 passed in S.T.C.No.108 of 2016 by the Court of Judicial Magistrate - Fast Track, Magisterial Level, Thiruvallur.

For Petitioner : Mr.B.Janakiram

For Respondent : Mr.R.Rajasekaran

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O R D E R

The petitioner is accused and the respondent is complainant. The respondent filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence punishable under section 138 of Negotiable Instruments Act (in short "NI Act") before the learned Judicial Magistrate, Fast Track Court, Magisterial Level at Thiruvallur, which was taken on file in S.T.C.No.108 of 2016. The learned Magistrate, after trial, found

the accused guilty of offence punishable under Section 138 of NI Act and by judgment dated 13.10.2017 convicted her and sentenced to undergo simple imprisonment for a period of 1 year and 3 months and directed to pay a sum of Rs.8,75,000/- as compensation. Aggrieved against the judgment of conviction the petitioner/accused has filed an appeal before the learned Principal District and Sessions Judge, Thiruvallur, in C.A.No.160 of 2017 and the learned Sessions Judge, after adverting to the materials placed on record and after hearing both the parties, by judgment dated 27.04.2018 partly allowed the appeal by confirming the conviction and modified the sentence alone to 8 months and directed the petitioner/accused to pay the compensation as ordered by the trial Court.

2 Aggrieved against the judgment dated 27.04.2018, the petitioner is before this Court with the present criminal revision case.

3 According to learned counsel for the petitioner, the petitioner did not borrow money from the respondent and did not issue any cheque towards discharging the same. In fact, the petitioner had borrowed money from one Chengalvarayan, who is brother-in-law of the respondent/complainant for the purpose of constructing a house and the cheques in question were issued towards security for the amount and those cheques were misused by the respondent/complainant to file this complaint. Ex.P.1 and Ex.P2 are the mortgage deeds executed by the petitioner with respect to the above said liability. The respondent/complainant has no means to lend such a huge sum of money. In fact the said Chengalvarayan had filed a complaint dated 09.11.2016 in C.S.R.No.964 of 2016 dated 11.11.2016 against the petitioner for the dispute arising out of money transaction, in which it was stated that one of the cheques in question was issued to him by the petitioner. Both the Courts below had failed to consider the above facts and erroneously convicted the petitioner, which warrants interference.

4 The learned counsel for the respondent would submit that the petitioner had borrowed money from the respondent and executed two mortgage deeds and subsequently issued three cheques bearing Nos.000001, 000002 and 000003 dated 13.07.2016 drawn at HDFC Bank, when the respondent presented the cheques for encashment, the same was returned as "insufficient funds". Hence the respondent issued legal notice, for which the petitioner had not chosen either to reply or to repay the amount. Therefore, the respondent filed a private complaint against the petitioner. Before the trial Court, the petitioner admitted his signature and execution of cheques and hence both the Courts below had rightly come to the conclusion that when the signature and execution of the cheque are admitted, it is

for the petitioner/accused to rebut the presumption under Section 118 and 139 of NI Act, which favours the complainant. The petitioner failed to rebut the said legal presumption and hence both the Courts below had rightly convicted the petitioner, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that for the amount said to have been borrowed by the petitioner, the respondent had initially obtained mortgage deeds and thereafter only obtained the cheques in question. Further the documents, said to have been obtained from the petitioner had been periodically renewed and the respondent had been receiving interest regularly. Further the petitioner also failed to get back the documents, which according to her, executed in favour of Chengalvarayan. Once the accused admitted that the signatures found in the cheques are that of the petitioner/accused and execution of the same is admitted, then

presumption under Section 118 and 139 of NI Act would come into play, which favours the respondent/complainant, holder of the cheques. This Court does not want interfere with the conviction, since the lower appellate Court as a final Court of fact finding, after re-appreciating the entire evidence on record had confirmed the conviction made by the trial Court and there is no valid reason to interfere with the same. However, this Court is inclined to modify the imprisonment alone, since the petitioner had tried to some extent to prove her defence, which could not be succeeded.

7 Accordingly, the criminal revision case is partly allowed. The conviction made by both the Courts below is hereby confirmed and the period of imprisonment alone is set aside and the petitioner is directed to pay the compensation amount alone as ordered by the trial Court within a period of six months from the date of receipt of a copy of this order, in default, to undergo simple imprisonment for a period of six months. Consequently connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

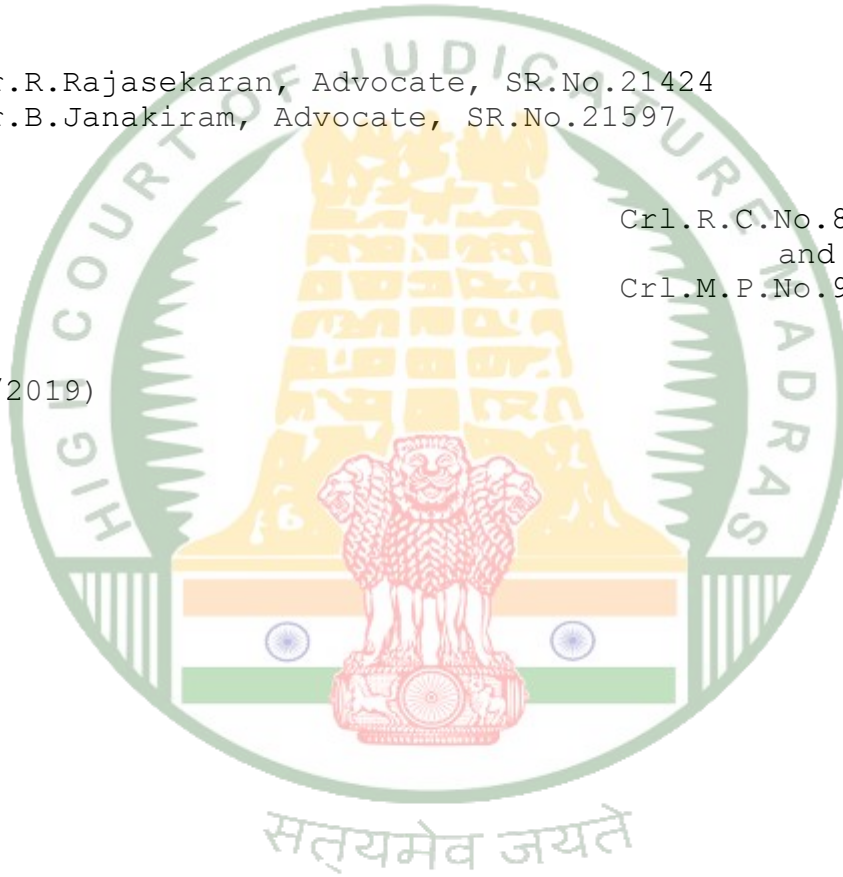
1. The Principal District and Sessions Judge, Thiruvallur.
2. The Judicial Magistrate - Fast Track, Magisterial Level, Thiruvallur.
3. The Chief Judicial Magistrate, Tiruvallur.

+1cc to Mr.R.Rajasekaran, Advocate, SR.No.21424

+1cc to Mr.B.Janakiram, Advocate, SR.No.21597

CrI.R.C.No.853 of 2018
and
CrI.M.P.No.9799 of 2018

Kak (20/05/2019)



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