BAIL SLIP

The Appellant/Accused namely P.Karpagam W/O.Prabhaakaran was directed to be released or bail as per order dated 28/3/17 made in Crl.MP.4581 & 4582/17 in Crl.Rc.516/17.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.516 of 2017

P.Karpagam ... Petitioner/Accused

Vs

N.Mahendran ... Respondent/Complainant

Prayer:- This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.PC, challenging the judgment of conviction and sentence, made in C.A.No.175 of 2016, by the First Additional District and Sessions Judge, Erode confirming, the judgment of conviction and sentence dated 17.09.2016, made in STC.No.722/2017 by the Judicial Magistrate, Fast Track Court No-I, Erode.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.V.S.Senthil kumar

ORDER

This Criminal Revision Petition has been filed challenging the judgment of conviction and sentence, made in C.A.No.175 of 2016, by the First Additional District and Sessions Judge, Erode confirming, the judgment of conviction and sentence dated 17.09.2016, made in STC.No.722/2017 by the Judicial Magistrate, Fast Track Court No-I, Erode, finding petitioner/accused guilty for the offence under Section 138 of the Negotiable Instruments Act and Convicting and Sentence the petitioner/accused to undergo simple imprisonment for a period of six months and also to pay a sum of Rs.6,00,000/-, by the petitioner/accused and to respondent /complainant, by way of compensation, in default, to undergo simple imprisonment for a period of one month.

2.This Court heard the learned counsel on either side and perused the materials on record.

3.Brief facts of the case are that the petitioner/accused is a known person to the respondent/complainant and the petitioner /accused had borrowed a huge amount of Rs. 6,00,000/- , by way of hand loan from the complainant by executing a promissory note dated 11.10.2014 for his family urgent expenses and in discharge of the said liability, the petitioner/ accused had issued, a post dated cheque bearing No.775898 dated 11.10.2014 drawn at Karur Vysya Bank for a sum of Rs.6,00,000/- in favour of the respondent/complainant. When the respondent/claimant had presented the cheque for collection through the bank viz., Indian Overseas Bank on 15.11.2014, the cheque had been returned, as dishonoured on the ground of insufficient funds. The respondent/complainant had issued an Advocate notice, dated 26.11.2014 to the accused, calling upon her, to pay the said sum of Rs.6,00,000/- within fifteen days from the date of receipt of the notice. The accused had received the notice on 27.11.2014 and even after receiving the notice, the accused neither made payment nor sent a reply . Hence, a complaint was filed before the Trial Court for the offence under Section 138 of N.I.Act. The petitioner/accused was summoned and questioned about the charges and the petitioner/ accused denied the charges framed against her and thereafter, the respondent/complainant was directed to left in evidence. On the side of the complaint, and the Exhibits P1 to P10 were marked. The accused was examined under Section 313 (b) Cr.P.C and the accused denied the changes levelled against her. On the side the petitioner/accused, D.W.1 to D.W.3 were examined before the Trial Court, the Trial Court, after careful appreciation of the evidence let in on both sides, had convicted the petitioner/ accused under Section 138 of Negotiable Instrument Act and sentenced her to undergo simple imprisonment for a period of six months and also awarded a sum of Rs.6,00,000/- as compensation payable to the respondent/claimant and indefault in payment of compensation to undergo simple imprisonment for a period of one month against the said order of the Trial Court, the petitioner/accused had filed an appeal dated 17.09.2016 before the First Additional District and Sessions Judge, Erode and the lower Appellate Court had dismissed the appeal confirming the order passed by the Trial Court. As against the same, present Revision Petition has been claimed.

4.The learned counsel for the petitioner/Accused would submit that the Courts below erred in convicting the petitioner, though there was evidence to show that the cheque was issued in respect of a earlier transactions with one sivakumar, and the respondent is a stranger and that there are no circumstances to conclude the payment of Rs.6,00,000/-

by way of handloan by the respondent. He would further submit that the Courts below has failed to take into consideration, that the cheque was given only as security, by the petitioner and he would submit that admittedly, the respondent/complainant is not an income tax assesse prior to 2015 and even during the cross examination, it was admitted that huge amount alleged to have paid in cash to the petitioner was not reflected in his Income tax returns.

5.He would further submit that the Courts below failed to consider the evidence of PW1 with regard to huge amount lent to the accused by cash which is contradictory and inconsistent and no material had been produced before the Court to substantiate the possession at Rs.6,00,000/- by way of cash on 11.10.2014. Further the Court has also failed to take into consideration that the Ex.P9 income tax self attested return was submitted subsequent to the filing of the complaint.

6.Per contra the learned counsel for the respondent/complainant would submit that the petitioner/accused had not let in evidence rebutt the presumption under the Act. Though the petitioner/accused had stated that the cheque was handed over to one Sivakumar and that the cheque was misused by the respondent/claimant, the said Sivakumar was examined as DW1 and he has not supported the case of the accused. Further, the respondent/complainant by marking documents ExP6 to ExP10 had proved that he is doing agriculture to the extent of 10 acres of land and was having 180 coconut trees and that the petitioner was capable of lending Rs.6,00,000/- and that the Courts below, after a careful analysis of evidence of the complainant as well as the defence witnesses and having found that the petitioner/accused has failed to rebut the presumption has rightly convicted the petitioner/accused. He would submit that the petitioner/accused had taken inconsistent stands that cheque was handed over to one Sivakumar and that apart one Sundaram was also examined as DW2 to establish that the cheque was given to one Sivakumar and he has also not supported the case of the defence.

7.Heard both sides and carefully analysed the materials on record.

8.The Courts below finding that the petitioner/accused has not rebutted the presumption under Section 139 of the Negotiable Instrument Act and finding that the respondent/complainant has complied with the ingredient of Section 138 of the Negotiable Instrument Act, have rightly convicted the petitioner/ accused based on the evidence on record.

9. The Courts below have finding that the petitioner/accused had not denied the issuance of cheque and the signature in the cheque and finding that she had not discharged the burden to rebut the presumption have found the petitioner/accused guilty and convicted and sentenced here. I do not find any infirmity in the Judgment of both Courts below and thereby this Revision Petition stands dismissed.

10.Accordingly, this Criminal Revision Petition is dismissed. The bail bond if any executed by the petitioner/accused shall stands cancelled and the trial Court is directed to take necessary steps to secure the presence of the petitioner/accused and commit her to prison to undergo the remaining period of sentence if any.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//
Sub Assistant Registrar

vsn

To:

1.The First Additional District and
Sessions Judge, Erode.

2.The Judicial Magistrate,
Fast Track Court No-I, Erode.

3.The Chief Judicial Magistrate,
Erode.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Kamadevan, Advocate SR.83765
+1cc to Mr.V.S.Senthil kumar, Advocate SR.83858

Crl.RC.No.516 of 2017

KK(CO)
CB(20/11/2019)