

Bail Slip

The appellant namely Anitha Wife of Shayaraj accused in STC.292/2013 dated 30.07.2014 on the file of the Judicial Magistrate Fast Track court at Hosur, was directed to be and hereby is confirmed and this Civil Miscellaneous Appeal is dismissed. released on bail as per order of this court dated 14.05.2015 and made in MP.1 of 2015 in Crl Rc.458 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl RC.No.458 of 2015

and

M.P. Nos. 1 & 2 of 2015

Anitha

....Petitioner

Vs.

C. Lourdusamy

....Respondent

Prayer : Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the judgment passed in Crl.A.No.58 of 2014 dated 10.02.2015 on the file of the Principal District Sessions Court at Krishnagiri in confirming the conviction passed in judgment dated 30.07.2014 in S.T.C.No.292 of 2013 on the file of the Judicial Magistrate Fast Track Court at Hosur and sentencing the petitioner to undergo six months imprisonment under Section 138 of the Negotiable Instruments Act, 1882 and to pay compensation of Rs.12,00,000/- under Section 357 of the Criminal Procedure Code, 1973 by allowing the present Criminal Revision Petition.

For Petitioner : Mr. S.Arokiamaniraj,
Legal Aid Counsel

For Respondent : Mr. Karthikeyan
for M/s. V. Nicholas

ORDER

This Criminal Revision Petition has been directed against the judgment dated 10.02.2015 passed in CrI. A. No.58 of 2014 on the file of the Principal District Sessions Court, Krishnagiri, confirming the conviction and sentence imposed on the petitioner/accused in STC No.292 of 2013 vide judgment dated 30.07.2014 on the file of the Judicial Magistrate, Fast Track Court, Hosur.

2. The complaint has been lodged by the respondent/complainant under Section 138 of the Negotiable Instruments Act against the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1882. According to the case of the complainant, the revision petitioner/accused borrowed a sum of Rs.2,00,000/- on 27.12.2012, Rs.5,00,000/- on 26.02.2013 and Rs.5,00,000/- on 31.03.2013 in connection with her daughter's education and for the amount borrowed, she had issued a post dated cheque dated 25.07.2013 for a sum of Rs.12,00,000/- and when the abovesaid cheque was presented for collection the same had been returned for the reason that the account had already been closed by the revision petitioner/accused and following the same, the complainant issued the legal notice calling upon the revision petitioner/accused to pay the amount and inasmuch as the revision petitioner/accused had failed to comply with the demand made under the statutory notice, resultantly, the complaint has been preferred by the complainant against the revision petitioner/accused under Section 138 of the Negotiable Instrument Act.

3. To sustain the complainant's case, P.Ws. 1 and 2 were examined, Exs.P1 to P12 were marked. In support of the defence version, the revision petitioner/accused has examined herself as R.W.1 and marked Ex.R1.

4. The Judicial Magistrate, Fast Track Court, Hosur, on an appreciation of the materials placed on record by the respective parties and the submissions made, was pleased to convict the revision petitioner/accused under Section 138 of the Negotiable Instrument Act and sentenced her to undergo simple imprisonment for 6 months and also to pay a compensation of Rs.12,00,000/- under Section 357 of the Code of Criminal Procedure, 1973.

5. The Criminal Appeal preferred by the revision petitioner/accused against the conviction and sentence imposed on her has been dismissed by the Principal Sessions Court, Krishnagiri. Impugning the conviction and sentence imposed on her by the courts below, the present Criminal Revision Petition has been preferred by the revision petitioner / accused .

6. Considering the evidence adduced by the complainant examined as P.W.1 and the documents marked in support of the complainant's case, particularly, the cheque issued by the revision petitioner/accused marked as Ex.P1 and the return of the cheque by the concerned bank on presentation and the reason adduced therein and the issuance of the legal notice and the receipt of the same by the revision petitioner/accused, it is found that the revision petitioner/accused has not chosen to send any reply to the legal notice sent by the complainant calling upon her to pay the amount involved in the matter.

7. From the materials placed on record, it is found that the revision petitioner/accused has taken a defence that she was having business dealings with the wife of the complainant and in connection with the said business, she had given the cheque in question as a security. However, pointing to the abovesaid version taken by the revision petitioner/accused in support of her defence, no acceptable and reliable material has been placed on record. It is found that the revision petitioner/accused has also lodged a complaint against the complainant's wife marked as Ex.P8 and to establish the same, the complainant has examined P.W.2, the police constable. However, from the evidence adduced in the matter, it is found that the revision petitioner/accused has disowned the lodgment of the complaint said to have been preferred by her. However, she would admit the signature contained in the complaint and the said signature has been marked as Ex.P9. On a perusal of the complaint, it is found that according to the revision petitioner/accused, the complainant's wife had stealthily taken away the cheque and the receipt kept by her in the hand bag and only in connection with the same, she had preferred the complaint. However, as above pointed out, the revision petitioner/accused has disowned the complaint said to have been lodged by her marked as Ex.P8, but strangely she would admit the signature contained in Ex.P8, which has been marked as Ex.P9. According to the revision petitioner/accused, the signature had been obtained by the police in a blank paper. Be that as it may, now according to the revision petitioner/accused, the cheque in question had been presented by her only as a security in connection with the silk business which she had with the complainant's wife. It is found that the dispute had arisen between the revision petitioner/accused and the complainant's wife from April 2013. In such view of the matter, it is found that following the same, the revision petitioner/accused had chosen to lodge the complaint against the complainant's wife. Furthermore, following the dispute between the revision petitioner/accused and the complainant's wife, if really the revision petitioner/accused had given the cheque in question as a

security qua the silk business, as rightly held by the courts below, the revision petitioner/accused should have taken appropriate legal action to retrieve the cheque in question either from the complainant's wife or from the complainant, however, no such legal action had been initiated by the revision petitioner/accused. As above pointed out, she had even gone to the extent of disowning the complaint lodged by her marked as Ex.P8 as the contents of the same do not support her defence version. Therefore, the courts below, had rightly disbelieved the defence version put forth by the revision petitioner/accused particularly that the cheque in question had been handed over to the complainant's wife as a security qua the silk business. When the factum of the revision petitioner/accused having business transaction with the complainant's wife has not been established by adducing acceptable and reliable material and furthermore when the revision petitioner/accused has not placed any material to sustain that she had given the cheque in question as a security in connection with the silk business and as above pointed out the revision petitioner having not chosen to challenge the legal notice sent by the complainant, all put together, would only lead to the conclusion, as held by the courts below, that inasmuch as the revision petitioner/accused had received the amount from the complainant in connection with her daughter's education accordingly she is unable to place any material to rebut the presumption which had been rightly raised in favour of the complainant by the courts below.

8. The argument has been raised by the petitioner's counsel that the complainant has not placed any material to show his solvency to pay a sum of Rs.12,00,000/- to the revision petitioner. However, considering the legal notice sent by the complainant and the revision petitioner/accused having not chosen to challenge the same in any manner and the revision petitioner/accused having failed to establish her defence version and in such view of the matter, when no material at all has been projected by the revision petitioner/accused to rebut the presumption raised in favour of the complainant, the courts below are fully justified in holding that the cheque in question issued by the revision petitioner/accused is only in connection with the borrowal of the amount received from the complainant for her daughter's education. The revision petitioner/accused having issued the cheque in question and the cheque having got bounced on presentation and despite the statutory notice, the revision petitioner/accused having failed to pay the amount due to the complainant, in such view of the matter, the courts below are justified in holding that the defence version put forth by the complainant that the complainant has failed to establish his means to pay the amount in question, as such, has no locus standi.

9. In the light of the abovesaid discussions, the courts below are found to have rightly assessed the materials placed on record both oral and documentary in the correct perspective and also considering the principles of law governing the case involved in the matter, are found to be justified in convicting and sentencing the revision petitioner/accused under Section 138 of the Negotiable Instrument Act and the sentence imposed on the revision petitioner is also found to be not on the higher side.

10. Considering the abovesaid reasons, I do not find any infirmity or error in the conviction and sentence imposed on the revision petitioner / accused by the courts below. Resultantly, the Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Copy to

1. The Principal District Sessions Judge, Krishnagiri
2. The Judicial Magistrate Fast Track Court, Hosur
3. The Section officer, Criminal Section, High Court, Madras
4. The Chief Judicial Magistrate, Krishnagiri (for information)

+lcc to Mr.V.Nicholas, Advocate in SR.NO..28417

Cr1 RC.No.458 of 2015

RV(19/10/2020)

WEB COPY