

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2020

PRONOUNCED ON: 18.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.673 of 2020

G. Dorairaj

Petitioner

vs.

J. Janabai

Respondent

Criminal Revision Petition filed under Section 397 Cr.P.C. seeking to set aside the order dated 07.03.2020 passed in Crl.M.P. No.12968 of 2019 in Crl.A. No.22 of 2019 on the file of the III Additional Sessions Court, City Civil Court, Chennai.

For petitioner Mr. J.R.K. Bhavanandham
for Ms. M. Sabitha
For respondent Mr. N. Baskaran

ORDER

This case was taken up through video conferencing.

2 For the sake of convenience, the petitioner and the respondent will be referred to as the complainant and accused respectively.

3 It is the case of the complainant that the accused was his colleague in the Kilpauk Medical College Hospital and on that acquaintance, she availed a hand loan of Rs.3,30,000/- from him and executed a promissory note dated 10.11.2014 (Ex.P.1); the accused did not pay interest for the said loan and ultimately, when the complainant started pressurising her, she gave a post dated cheque for a sum of Rs.3,30,000/- bearing the date 16.01.2016 (Ex.P.2); though the cheque was dated 16.01.2016, at the request of the accused, the complainant presented the cheque only on 28.03.2016 for clearance; the cheque was dishonoured on the ground "funds insufficient" vide return memo (Ex.P.3); hence, the complainant issued a statutory demand notice dated 31.03.2016 (Ex.P.4), which was received by the accused vide Ex.P.5 and Ex.P.6; however, the accused neither replied to the notice nor complied with the demand made in it

and therefore, the complainant initiated a prosecution in C.C. No.5846 of 2016 in the Court of Metropolitan Magistrate (FTC No.1), Egmore at Allikulam under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

4 The complainant examined himself as P.W.1 and marked six exhibits. From the side of the accused, no witness was examined nor any document marked.

5 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against her, she merely denied everything and did not offer any explanation as to the circumstances under which the impugned cheque was issued by her.

6 After hearing either side, the trial Court, by judgment and order dated 11.12.2018, convicted the accused of the offence under Section 138 of the NI Act and sentenced her to undergo six months simple imprisonment, besides directing her to pay the cheque amount as compensation, in default to undergo two months simple imprisonment. The sentence was suspended by the trial Court under Section 389(3) Cr.P.C.

7 Challenging her conviction and sentence, the accused filed Crl.A. No.22 of 2019 in the Court of Session, which was made over to the III Additional Sessions Court for hearing. While so, the accused filed Crl.M.P. No.12968 of 2019 in Crl.A. No.22 of 2019 under Section 391 Cr.P.C. for adducing additional evidence. Despite the contest made by the complainant, the appellate Court allowed the petition filed by the accused, on 07.03.2020, challenging which, the complainant is before this Court.

8 Heard Mr. J.R.K. Bhavanandham, learned counsel representing Ms. M. Sabitha, learned counsel on record for the complainant and Mr.N.Baskaran, learned counsel for the accused.

9 It is trite that additional evidence can be adduced in the appellate Court under Section 391 Cr.P.C. by any party to the appeal, but, the party who seeks to let in additional evidence, has to place before the appellate Court, satisfactory reasons substantiating his prayer.

10 In this case, the accused has stated in the petition filed by her under Section 391 Cr.P.C. that she had not borrowed Rs.3.30 lakhs from the complainant on 10.11.2014 nor issued the impugned cheque dated 16.01.2016; she had borrowed Rs.3 lakhs from the complainant on 10.11.2009 and had registered a mortgage deed in favour of the complainant; at the time of registration of the mortgage deed, the complainant had stealthily taken away

the cheque book that was kept by her in her bag and has misused the cheque subsequently for launching the present prosecution; therefore, the accused must be given an opportunity to mark the original mortgage deed dated 10.11.2019, summon the Manager of Oriental Bank of Commerce, Kilpauk, to produce her statement of account for the period 02.11.2008 to 30.03.2016 and to mark the attendance register maintained in the Government Vellore Hospital to show that she was on duty on 10.11.2014.

11 Mr. Baskaran took this Court through the evidence of the complainant and the cross-examination of the complainant by the counsel for the accused. In the cross-examination, the complainant has admitted that, earlier, the accused had borrowed Rs.3 lakhs and she has discharged that loan and at that time, he had not taken any cheque from her. Thus, the complainant has not suppressed or denied that he had advanced a loan of Rs.3 lakhs to the accused earlier. But, it is the case of the complainant that she returned the loan of Rs.3 lakhs to him and in the year 2014, he gave her a fresh loan of Rs.3.30 lakhs, for which, she gave a promissory note. It may be relevant to state here that even according to the accused, the mortgage deed is of the year 2009. In the petition, the accused has stated that the complainant had stolen the cheque book from her bag in the year 2009 and had used it in 2014. Whereas, in the cross-examination of the complainant, no such suggestion has been put. It may be pertinent to state here that the accused had not issued any reply notice to the statutory demand notice that was issued by the complainant.

12 As regards the plea of alibi that the accused was working in the Government Vellore Hospital on 16.01.2016, it is seen that in the cross-examination, it has been suggested to the complainant that the accused was working in Villupuram, which suggestion, the complainant has denied. When the Court questioned the accused under Section 313 Cr.P.C., nothing prevented her from explaining the entire circumstances which she is seeking to project now. She should have examined witnesses after she was questioned under Section 313 Cr.P.C., which option also she did not choose to elect. The documents which she wants to now file were available with her, even at the time of the trial. In fact, the complaint was filed in the year 2016 and the complainant was cross-examined by the accused on 11.01.2018. The judgment was delivered by the trial Court on 11.12.2018. Without considering even these fundamental aspects, the appellate Court, in a cavalier manner, has allowed the petition under Section 391 Cr.P.C. by stating that the appeal being the continuation of the trial, the accused must be given an opportunity to prove her defence in the interests of justice. If such parameters are fixed for letting in additional evidence, the police will take advantage of it in police cases and seek to

adduce additional evidence to fill up the lacuna. We cannot have one standard for the prosecution and another standard for the accused.

13 In view of the foregoing discussion, the order dated 07.03.2020 passed by the appellate Court in the petition filed by the accused, under Section 391 Cr.P.C., is set aside.

Resultantly, this criminal revision stands allowed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

cad

To

1.The Metropolitan Magistrate (FTC No.1)
Egmore at Allikulam

2.The III Additional Sessions Judge
City Civil Court
Chennai

3.The Public Prosecutor
Madras High Court
Chennai - 600 104

+1cc to M/s.M.Sabitha, Advocate, Sr.No.30534

+1cc to Mr.N.Bhaskaran, Advocate, Sr.No.30910

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GP(CO)
GS(19/10/2020)