



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.906 of 2020 and  
Crl.M.P.No.6381 of 2020

G.Subhashini

... Petitioner

Vs.

M.Dhanalakshmi

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the VII Additional City Civil Judge, at Chennai in Crl.M.P.No.9070 of 2018 on 05.12.2019, in Crl.A.No.295 of 2016, pending before the VII Additional City Civil Judge at Chennai.

For Petitioner : Mr.K.Sarath Kumar

For Respondent : Mr.A.Ashwin Kumar,  
Legal Aid Counsel.

ORDER

The petitioner was convicted by judgment, dated 02.11.2016, in C.C.No.300 of 2015, by the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo three months Simple Imprisonment and to pay a compensation of Rs.2,50,000/- to the respondent under Section 357(3) Cr.P.C., within one month. Aggrieved over the judgment of the trial Court, an appeal was preferred by the petitioner before the learned VII Additional City Civil Judge, Chennai in C.A.No.295 of 2016. During pendency of the appeal, the petitioner filed a petition under Section 391 Cr.P.C., in Crl.M.P.No.9070 of 2018 to take additional evidence. The learned VII Additional City Civil Judge, Chennai, by order, dated 05.12.2019, dismissed the petition, against which the present revision.

2.Despite notice was served to the respondent, no representation for her. Hence, this Court appointed Mr.A.Ashwin Kumar as Legal Aid Counsel for the respondent.



3.The gist of the case is that the petitioner/accused borrowed a sum of Rs.2,50,000/- on 21.10.2013 from the respondent/complainant for her urgent needs and promised to repay the same within a short period. The respondent made several demands seeking return of the amount and after lapse of more than 12 months, the petitioner on 24.11.2014 issued two cheques bearing numbers 65143 and 65144 for a sum of Rs.50,000/- and Rs.2,00,000/- respectively. These two cheques when presented for collection in Indian Bank, Royapuram Branch on 24.11.2014, the same were dishonoured and returned on 25.11.2014 for the reason "Payment Stopped by Drawer". On 19.12.2014, the respondent issued statutory notice and the notice was returned with endorsement "Absent Intimation Delivered". Hence, the complaint was lodged.

4.During trial, the respondent examined himself as PW1 and marked Exs.P1 to P5 and on the side of the defence, no witness was examined and no document was marked.

5.The primary defence of the petitioner is that the petitioner did not avail any loan from the respondent and it was her husband, who received the loan amount from the respondent. Likewise, the respondent is only a house wife and she has no source of income and it was her husband Murugesan, who gave the loan amount and since he happens to be a Government Servant, he used his wife to launch the prosecution against the petitioner. Further, the cheques issued are only for security purpose when the loan was obtained from the respondent. The loan amount was repaid, but the security cheques were not handed over back to the petitioner. Using the same, the respondent falsely implicated the petitioner in this case. It was submitted that the petitioner had given a complaint to the Inspector of Police, Royapuram Police Station. During enquiry, an undertaking was given by the respondent's husband and the issue was settled for the balance payment of Rs.1,00,000/- in total and the same was also paid. In these facts, a part was admitted and a part was denied by the respondent during trial and the trial Court had convicted the petitioner.

6.The specific contention of the petitioner is that after Police complaint, the respondent's husband gave written undertaking that the balance amount of Rs.1,00,000/- was repaid by the petitioner and due to strained relationship between them, the prosecution was launched against her. The petitioner obtained some documents through the Right to Information Act from the Inspector of Police, Royapuram Police Station and now, she wants to bring it on record.

7.The contention of the petitioner is that the case has been filed in the year 2015. During the year 2015, the petitioner



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cross examined the respondent, at the time of cross examination, suggestions were made stating that whether in the month of April 2014, a Police complaint was lodged against the respondent's husband, regarding the cheque amount involved in this case. Though the respondent admitted that she went to the Police Station, thereafter she denied the other aspects. Hence, the petitioner prayed time for producing vital documents, which were sought from to the N-1, Royapuram Police Station. When the petitioner approached the Police for the same, she was not provided with necessary documents and hence, she filed application under the Right to Information Act. In the meanwhile, the evidence was closed on the side of the petitioner/accused and the case was posted for arguments. The petitioner filed recall and reopen petition and completed her cross examination. But, the learned trial Judge failed to permit the petitioner to let her defence evidence for marking the vital documents after completion of cross examination. In view of the same, the petitioner filed the documents along with the written submissions. The trial Court rejected the petitions filed in M.P.No.1985 of 2016 to reopen the case, M.P.No.1986 of 2016 to permit the petitioner to depose in evidence and M.P.No.1987 of 2016 to recall the petitioner's evidence and dismissed the same on 02.11.2016. The lower appellate Court failed to consider the above injustice of the trial Court by dismissing the petition filed under Section 391 Cr.P.C., to adduce further evidence and to examine the petitioner under Section 315 Cr.P.C. The undertaking given by the respondent's husband is a vital document. The lower appellate Court dismissing the petition stating that the petition has been filed to drag on the proceedings is not proper. Hence, he prayed to set aside the order of the lower appellate Court.

8.The learned counsel for the respondent submitted that the trial Court gave several adjournments to the petitioner to produce the defence witness, but the petitioner failed to do the same. The trial Court allowed the petitions for reopen and recall filed as M.P.Nos.3819 & 3820 of 2016 in C.C.No.300 of 2015. The respondent/PW1 was recalled again and cross examined thoroughly by the petitioner. After completion of cross examination of the respondent/PW1, the trial Court gave opportunity to file defences evidence if any, but the petitioner has not filed any list of witnesses on her side. Thereafter, the trial Court posted the case for arguments and the written statements were filed on both sides and the trial Court reserved the case for judgment on 25.10.2016. On 25.10.2020, when the case was posted for judgment, the petitioner came up with a new reason stating that she was not given chance to lead the defence evidence. Hence, the petitioner filed another Miscellaneous Petitions before the trial Court at the stage of pronouncing judgment, to produce the defence witness.



9. It is further submitted that in this case, the issuance of cheques as well the signature are not disputed by the petitioner. The presumption under Section 139 of the Negotiable Instruments Act would come into play. The petitioner coming up with stories one after another that the cheques were given to the respondent for security purpose while availing loan and the same were misused is without any material. The petitioner has not produced any proof or materials to show that the petitioner's husband made the payment as per the settlement arrived at the Police Station. The suggestions put by the petitioner during cross examination have been denied and the petitioner has not brought any evidence to substantiate the loan amount has been settled and the liability of the cheque amount has been discharged. It is further submitted that the petitioner has tried all the dilatory tactics to protract and prolong the trial. The trial Court after giving sufficient opportunity and time finally rendered the judgment of conviction. Further, the petitioner has not sent any reply for statutory notice issued by the respondent and she has not given any explanation when she was questioned under Section 313 Cr.P.C. Though the petitioner stated that she received certain documents from Royapuram Police Station through the Right to Information Act, the said documents were not produced and nothing has been put forth during arguments to substantiate the claim of the petitioner.

10. It is to be seen that the petitioner even failed to examine her husband R. Ganesh to give any explanation for loan transaction and repayment of the loan. The petitioner has been filing one petition or other, is only to protract and prolong the appeal. In fact, in this case, the chief examination of PW1 was held on 26.06.2015 and cross examination of PW1 was held on 13.10.2015 and again PW1 recalled and cross examined on 28.10.2015 and finally on 06.09.2016. Despite giving sufficient opportunity to the petitioner, she unable to dislodge the presumption and put forth his case. Hence, he prayed to dismiss the revision.

11. This Court considered the rival submissions and perused the materials available on record.

12. The main contention of the petitioner is that the respondent's husband is a known money lender in the area, used to fleece the people with exorbitant interest and for which, the petitioner sent a representation to the Chief Minister of Tamil Nadu, which has been received on 02.05.2014. An enquiry was conducted by the Inspector of Police, N-1 Royapuram Police Station and the petitioner participated the enquiry on 04.05.2014. The respondent's husband Murugesan participated enquiry on 05.05.2014 and gave a letter stating that the



petitioner received Rs.2,50,000/- and documents available. The husband of the respondent Murugesan would be proceeding against the petitioner legally through Court and would not exert undue pressure and harassment to the petitioner. The Inspector of Police, N-1 Royapuram Police Station closed the complaint on 25.07.2014 for the reason that the petitioner has not participated for enquiry, further the dispute is an money lending, civil in nature.

13.It is seen from the written arguments filed by the petitioner in paragraph No.8, the receipt of the documents through the Right to Information Act are mentioned and the reason for her inability to mark the documents within a time during evidence, is also mentioned. On perusal of judgment of trial Court, it is seen that there is no advertance to these documents, which were produced along with the written submission.

14.In view of the above, this Court finds that the petitioner had taken various efforts to bring the documents on record which she obtained through Right to Information Act. It would have been different had the trial Court considered the same and rendered the judgment. Strangely, there is no mention of these documents.

15.In the result, the order dated 05.12.2019, made in Crl.M.P.No.9070 of 2018 in C.A.No.295 of 2016, passed by the learned VII Additional City Civil Judge, Chennai is hereby set aside and the revision is, accordingly, allowed.

16.The lower appellate Court to take the representation of the petitioner given to the Chief Minister of Tamil Nadu; the letter of the petitioner dated 04.05.2014; the letter of the husband of the respondent Murugesan dated 05.05.2014 and the report of the Inspector of Police, N-1 Royapuram Police Station, dated 25.07.2014 as additional evidence in this case. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The VII Additional Judge,  
City Civil Court,  
Chennai.
2. The Inspector of Police,  
N-1, Royapuram Police Station,  
Chennai.

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GP(CO)  
CT(09/08/2021)