IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.Nos.7711 & 7904 of 2020 in

Crl.R.C.Nos.1112 & 1133 of 2020

K.Sujatha ... Petitioner in both cases

Versus

D.Murugesan ... Respondent in both cases

COMMON PRAYER: Criminal Miscellaneous Petitions filed under Section 397(1) r/w 439 of the Code of Criminal Procedure, to suspend the sentence of Imprisonment and compensation confirmed by the learned Principal Sessions Judge, Chengalpattu in Crl.A.Nos.29 & 28 of 2019 by the judgment dated 20.03.2020, by confirming the judgment and conviction and sentence imposed by learned Judicial Magistrate Fast Track Court (Magisterial Level) Alandur in C.C.Nos.31 & 30 of 2018 dated 14.03.2019 and enlarge the petitioner/accused on bail, pending disposal of the Criminal Revisions.

For Petitioner : Mr.M.Karunanithi in both cases

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COMMON ORDER

Both Criminal Miscellaneous Petitions are filed to suspend the sentence of imprisonment and compensation passed by the learned Principal Sessions Judge, Chengalpattu in Crl.A.Nos.29 & 28 of 2019, dated 20.03.2020, confirming the judgments passed by learned Judicial Magistrate Fast Track Court (Magisterial Level) Alandur in C.C.Nos.31 & 30 of 2018, dated 14.03.2019 and enlarge the petitioner/accused on bail, pending disposal of the Criminal Revisions.

2.The conviction and sentence of the trial Court in C.C.Nos.31 & 30 of 2018 is that the petitioner to undergo one year Simple Imprisonment for offence under Section 138 of the Negotiable Instruments Act and to pay a fine of Rs.35,00,000/- as compensation to the respondent within 30 days.

3.For the sake of convenience and clarity, the petitioner and the respondent are referred as accused and complainant as per trial Court.

4.The gist of the case is that the accused was carrying on the business of interior decorations in her name and her husband Manohar. The business was carried out under the name of V2 Contracts, Exterior and Interior. The husband of the accused approached the complainant and borrowed a sum of Rs.35,00,000/- and Rs.33,63,000/- on 20.02.2015 and 06.06.2016 respectively for his business and family requirements. The accused agreed to repay the amount with an interest @ 12% per annum. In discharge of the said liability, the accused issued two cheque for Rs.35,00,000/- each. When the complainant presented the same for encashment, the same were unpaid and returned for the reason "Funds Insufficient". The complainant issue statutory notice to the accused and the same was returned "Unclaimed". Hence, the complaints were filed before the trial Court.

5.During trial, the complainant examined himself as PW1 and marked Exs.P1 to P6. Exs.P1 & P2 are the demand promissory notes executed by the husband of the accused, Ex.P3 is the cheque, Ex.P4 is the bank return memo, Ex.P5 is the legal notice and Ex.P6 is the return postal cover. The witness and exhibits are identical in both the cases. On the evidence and materials, the trial Court convicted the accused as stated above and the same was confirmed by the lower appellate Court.

6.The learned counsel for the petitioner/accused submitted that Exs.P1 & P2, the Demand Promissory Notes were not signed and executed by the accused and it was executed by her husband. The cheque Ex.P3 was given only as security, which was misused and projected as though the accused in discharge of the liability issued the cheque. He further submitted that the complainant has got no source of income in lending such huge amount. PW1 admitted that for lending the loan of Rs.35,00,000/- and Rs.33,63,000/-, he borrowed the said from his friends viz., Ponnurangam [Rs.25,00,000/-], Rajendran [Rs.30,00,000/-], Suresh [Rs.15,00,000/-] and Narayanan [Rs.16,00,000/-]. These persons were not examined as witnesses to prove the fact that the complainant had mobilized the amount through them. Further, the complainant admitted that the cheque [Ex.P3] was received by him when the loan was extended in the year 2015. It is to be seen that Ex.P3 is of the year 2017. The blank cheque has been filled up by the complainant is proved. The statutory notice Ex.P5 was not served on the accused. It is seen that the complainant after filing the complaint had filed a memo informing the Court that the address of the accused was changed. Thus, the complainant knowing that the accused is not residing in the said address and wantonly sent a notice to that address and projected as though the notice was unclaimed. The trial Court gave a finding that the accused is an educated person and signed the cheque is not proper. Further, the accused by cross examination of the complainant had proved and rebutted that the complainant in this case misused the cheque and filed the case against the petitioner.

7.He further submitted that the Trial Court and the Lower Appellate Court have not gone into the evidence and materials proper and mechanically convicted the petitioner. Hence, he prayed for suspension of sentence and bail.

8.This Court considered the submission made by the learned counsel for the petitioner and perused the material available on record.

9.It is seen from the cross examination of PW1 that the complainant has received the loan amount from his friends viz., Ponnurangam, Suresh, Rajendran and Narayanan. The accused called for the income tax return, but the complainant has not produced. The accused is a lady and Exs.P1 & P2 were executed by the husband of the accused. Hence, the demand promissory notes cannot be taken as corroborative material and the trial Court giving a finding that the liability has been proved is not proper. The lower appellate Court mentioned that one Ravi, who was working with the husband of the accused, had transaction with the complainant, but the said Ravi has not examined by the accused. Hence, rejecting the contention of the accused is not proper. Considering the submission made by the learned counsel for the petitioner, this Court is inclined to suspend the sentence on condition that the petitioner is directed to deposit further sum of Rs.17,50,000/- (Rupees seventeen lakhs and fifty thousand only) to the credit of C.C.Nos.31 & 30 of 2018 before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur on or before 25.02.2021 and on such deposit, the petitioner is directed to be enlarged on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur within a period of 7 days from 25.02.2021 and on further condition that the petitioner shall appear before the said Court once in three months at 10.30 a.m., i.e., from February 2021 till the disposal of the revision. If the petitioner fails to deposit the amount of Rs.17,50,000/- (Rupees seventeen lakhs and fifty thousand only) by 25.02.2021, the order would stand cancelled automatically. Accordingly, this Criminal Miscellaneous Petitions are ordered.

-sd/-
16/12/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS COURT,
CHENGALPET.

2 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT (MAGISTERIAL LEVEL),
ALANDUR.

3 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU [FOR INFORMATION]

+1 C.C. to M/S. C.PRABAKARAN Advocate on payment of necessary charges SR.No.8393

Order

in
CRL MP.Nos.7711 & 7904/2020

in
CRL.RC.Nos.1112 & 1133/2020

Date :16/12/2020

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