

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.691 of 2019

1. J.Rajathi

2. Sri Kamatchi Amman Traders

rep. by its Proprietrix J.Rajathi,
W/o.P.Jegathishvaran,
No.10, Balaji Nagar,
Muruga Nagar Street,
Sundarapuram, Coimbatore-24.

... Petitioners

Vs

N.Eswaramoorthy (Deceased)
substituted by his wife
E.Rathika Rani

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the judgment dated 11.04.2019 made in Crl.A.No.503 of 2018 on the file of the I Additional District and Sessions Judge, Coimbatore, reversing the judgment of acquittal dated 12.10.2018 made in C.C. No.428 of 2017 on the file of the Judicial Magistrate, Fast Track Court No.1 Magisterial level, Coimbatore, holding the petitioners/accused found guilty under Section 138 of the Negotiable Instruments Act (one year simple imprisonment and compensation of Rs.10,00,000/- payable to the respondent/complainant within three months) acquit the petitioner from the charge.

For Petitioners: Mr.B.R.Shankaralingam

For Respondent : Mr.P.Nagaraju

ORDER

The petitioners questioned the judgment of the appellate court reversing the order of acquittal passed by the trial Court in this revision.

2. The allegation against the first petitioner/accused is that she borrowed a sum of Rs.10,00,000/- from the respondent/complainant for business expenses on 07.04.2010, and

issued a cheque bearing No.012503, dated 06.07.2010 drawn on Indian Overseas Bank, Kurichi Branch, belonging to the second petitioner, in her capacity as the Proprietrix. When the complainant presented the cheque for collection, it was returned with an endorsement "Funds Insufficient". It is also alleged that after giving due intimation to the first petitioner and based on her request, the complainant represented the same on 02.09.2010 and for the second time also, the cheque was returned with the same endorsement. Hence, the complainant issued a statutory notice dated 13.09.2010 to the petitioners/accused and the petitioners/accused sent a reply to the same. It is further alleged that the first petitioner/accused issued the cheque knowingly well that she has no funds in the account and only to cheat the complainant. Hence, the respondent/complainant has filed the private complaint in C.C.No.428 of 2017 on the file of the Judicial Magistrate FTC No.I, Coimbatore.

3.Before the trial Court, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.7 documents, while the first petitioner / accused examined herself as D.W.1 and had chosen not to mark any documents.

4.Upon detailed appreciation of the oral and documentary evidence adduced by the parties, the Trial Court found the petitioners not guilty of offence under Section 138 of the Negotiable Instruments Act, 1881. The complainant filed an appeal in Crl.A.No.503 of 2018, which was allowed by the I Additional District and Sessions Court, Coimbatore, on 11.04.2019 setting aside the acquittal order and convicting the petitioners/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentencing the first petitioner to undergo one year simple imprisonment and to pay a sum of Rs.10,00,000/- as compensation to the complainant. The said judgment was challenged by the petitioners/accused in this revision.

5. Learned counsel for the petitioners submitted that the Trial Court, upon appreciation of the oral and documentary evidence adduced by the petitioners, rightly found them not guilty, but the appellate court fell in error in reversing the said well-considered order warranting interference of this Court.

6.On the other hand, learned counsel for the respondent contended that the Trial court failed to appreciate the evidence placed before it in accordance with law and hence, the judgment of the Trial Court was rightly reversed by the appellate court and thus, he prayed for dismissal of this revision.

7.Heard the submissions made by the learned counsel on either side and perused the materials placed before this Court.

8. The accused did not deny the issuance of the cheque ; she did not deny her signature found in the cheque ; she also did not deny the borrowal from the complainant ; but she disputed the quantum of borrowal, as her defence was that the borrowal was a sum of Rs.2,00,000/- during September, 2009, and not Rs.10,00,000/-, as alleged in the complaint. Even after holding so, the Trial Court held that the complainant has not produced any material to show that the amount of Rs.10,00,000/- was borrowed by the first petitioner and in discharge to the said loan, the cheque in question was issued and thus, relaying upon the judgment of the Hon'ble Apex Court in Krishna Janardhan Bhat V. Dattatraya G.Hegde, 2008 (1) CTC 433, held that the accused are not guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881.

9. The appellate court found that the said judgment in Krishna Janardhan Bhat V. Dattatraya G.Hegde, 2008 (1) CTC 433 was overruled by the Hon'ble Apex Court in Rangappa V. Sri Mohan, 2010 (11) SCC 441 and accordingly, noting the discrepancies in the judgment of the Trial Court reversed the said judgment. This Court is of the view that the Appellate Court dealt with the case properly and correctly reversed the findings rendered by the trial Court on merits and there is no reason much less valid reason to interfere with the said judgment of the appellate Court.

10. In fine, this revision is dismissed being devoid of merits. The trial Court is directed to secure the first petitioner/accused and commit her in prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the legal heirs of the complainant, as the case may be.

11. It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid. before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in this criminal revision. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gg

To

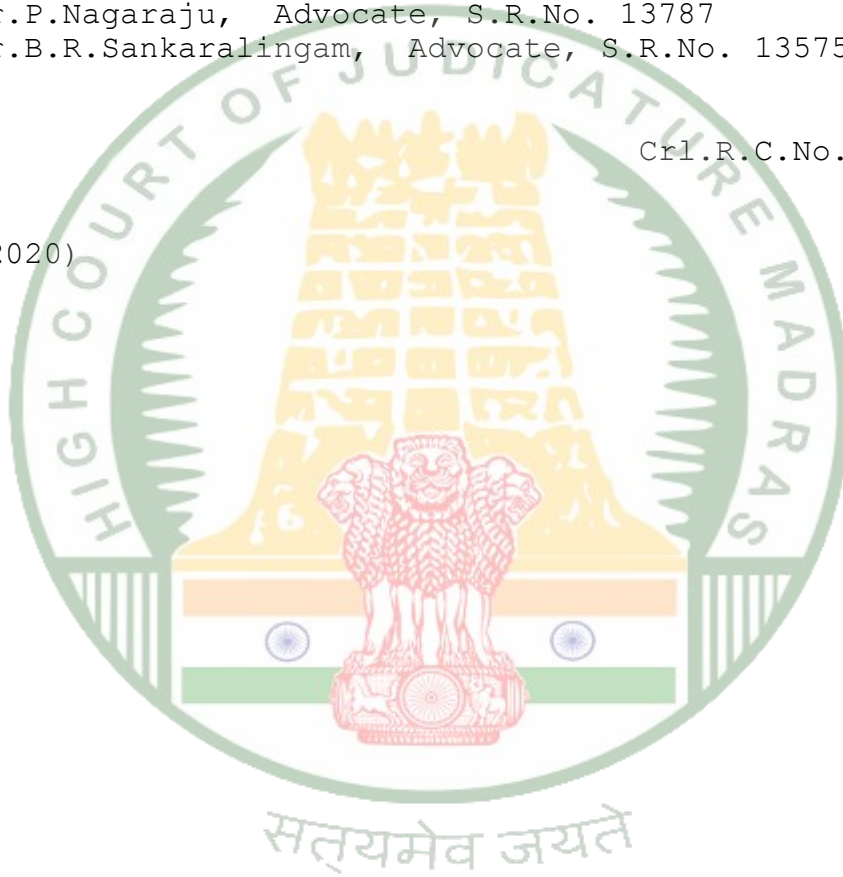
1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate, FTC No.1 Magisterial level,
Coimbatore.

+1cc to Mr.P.Nagaraju, Advocate, S.R.No. 13787

+1cc to Mr.B.R.Sankaralingam, Advocate, S.R.No. 13575

Cr1.R.C.No.691 of 2019

VSN II (CO)
GN (25/06/2020)



WEB COPY