



BAIL SLIP

The Appellant namely L.L.Malliga, W/o.Laxmanan, Accused in C.C.No.460 of 2006 on the file of the Judicial Magistrate No.1, Pollachi was directed to be released on bail as per order of this court dated 10.04.2017 and made in Crl.M.P.No.4285 of 2017 in Crl.R.C.No.478 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.478 of 2017

L.L.Malliga

... Appellant/Petitioner

Vs.

C.Sasi

... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the conviction imposed in the judgment dated 22.12.2016 made in C.A.No.36 of 2015 on the file of the learned I Additional District Sessions Judge, Coimbatore confirming the judgment dated 19.01.2015 made in C.C.No.460 of 2006 on the file of the learned Judicial Magistrate No.I, Pollachi by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.D.R.Arun Kumar

O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. The respondent preferred a private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act (shortly referred to as 'the Act') and same was taken on file as C.C.No.460 of 2006 by the learned Judicial Magistrate-I, Pollachi. After trial, the petitioner was found guilty of the said offence and was convicted for the same and sentenced to undergo simple imprisonment for one year and pay a fine of Rs.5,000/- in default to undergo two months simple imprisonment. Against the



same, the petitioner preferred CrI.A.No.12 of 2011, which was allowed and the matter was remanded to the trial Court for marking of documents properly. Thereafter, documents were marked afresh and the trial Court vide judgment dated 19.01.2015 convicted the petitioner and sentenced her to undergo simple imprisonment for six months and to pay a compensation of Rs.1,05,000/- to the respondent within a period of one month in default to undergo simple imprisonment for one month. Challenging the same, the petitioner preferred an appeal in CrI.A.No.36 of 2015 before the learned I Additional District and Sessions Judge, Coimbatore, which ended in dismissal, against which the present Criminal Revision has been filed.

2.The learned counsel for the petitioner has submitted that the trial Court failed to note that the respondent has no sufficient means to pay a sum of Rs.1,05,000/- to the petitioner and that the respondent did not file any document to prove his capacity to pay the said amount. He also submitted that the respondent failed to prove the very execution of the alleged cheque. Stating so, the learned counsel prayed for allowing this revision.

3.On the other hand, the learned counsel for the respondent has submitted that the trial Court has correctly considered the materials and evidence and has passed the impugned judgment and the findings of the trial Court have been rightly confirmed by the Lower Appellate Court and hence the judgments of the Courts below do not require any interference in the hands of this Court.

4.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

5.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh Vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "



6.It is the case of the respondent/complainant that the petitioner/ accused has borrowed a sum of Rs.1,25,000/- on 09.08.2005 and executed a promissory note agreeing to repay the same with interest at 12% per annum to the respondent/complainant on demand; when the respondent/complainant demanded payment, the petitioner/accused has issued a post dated cheque for a sum of Rs.1,05,000/- on 16.09.2005, which was returned dishonoured as insufficient funds. After receipt of the return memo from the bank, he issued a legal notice dated 08.12.2005, which was refused by the petitioner/accused and hence, the petitioner/accused has committed the offence under Section 138 of the Act. To prove his case, the respondent/complainant examined himself as P.W.1, besides marking Exs.P1 to P6 documents.

7.Since the petitioner /accused admitted her signature in the cheque in question, she has to rebut the presumption drawn in favour of the complainant through preponderance of probability. She raised a defence that her husband was having transactions with the brother of the complainant, during the course of which, the cheque in question was handed over to the complainant's brother, which was subsequently misused for filing the present complaint against the petitioner/accused. However, the said defence was not proved by examining any witness nor marking any document, except cross examination by the petitioner/accused. Hence, the trial Court has rightly held that the petitioner/accused failed to prove that there is no legally enforceable debt against her and ultimately convicted her for the offence as stated above.

8.The Lower Appellate Court has also dealt with the case properly and rightly confirmed the findings rendered by the trial Court on merits. This Court is not inclined to interfere with the said factual concurrent findings rendered by the Courts below.

9.In the result, the Criminal Revision Case stands dismissed being devoid of merits. The Trial Court is directed to secure the 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 complainant or to his legal heirs, as the case may be. It is always open to the parties to file an application before the Trial Court under Section 147 of the Negotiable Instruments 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) of this Court, who shall make it form part



of the records in CrI.R.C.No.478 of 2017. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge
Coimbatore.
2. The Judicial Magistrate No.1
Pollachi.
3. The Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.D.R.Arun Kumar, Advocate, sr.no.16433

+1cc to Mr.N.Ponraj, Advocate, sr.no.16688

CrI.R.C.No.478 of 2017

SSI (CO)
CS/08/07/2020