

Bail Slip

The Appellant/Accused N.Swarnajothi Nagaraj was released on bail (Accused Not in Jail) granted dated 21.07.2015 made in MP(MD). No.1/2015 in Crl.R.C. (MD).No.276 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C. (MD)No.276 of 2015

N.Swarnajothi Nagaraj ... Petitioner / Appellant /
Accused

-vs-

E.S.Shanmugavel Nadar ... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the judgment dated 10.02.2011 made in C.A.No.52 of 2010 on the file of the Additional District and Sessions Judge, (FTC No.II), Tuticorin, confirming the conviction and modifying the sentence made in S.T.C.No.23 of 2008, dated 12.07.2010 on the file of the learned Additional District Munsif, Tiruchendur and set aside the same as illegal and allow the above revision.

For Petitioner : Mr.J.Sulthan Basha,
For M/s.Ajmal Associates

ORDER

This Criminal Revision Petition is filed by the accused person against the judgment and conviction passed by the Lower Appellate Court, modifying the sentence passed by the Lower Court.

2.The petitioner is the accused, who lost her case before the Courts below. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The case of the prosecution is that on 05.07.2006, the accused had borrowed a sum of Rs.4,25,000/- for development of her



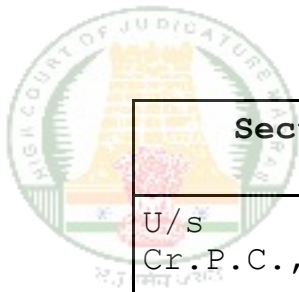
business activities and after two months, he issued a cheque for a sum of Rs.4,36,350/- including interest amount of RS.11,350/- for legally enforceable debt on 05.09.2006, drawn at Coimbatore Indian Bank, Puviakulam Branch. The respondent presented the cheque for collection in the Primary Agricultural Co-operative Bank. However, the said cheque was returned on 15.09.2006 with an endorsement that 'funds insufficient'. Thereafter, the complainant has issued legal notice on 09.10.2006 and the same was served on the petitioner on 10.10.2006. However, the accused neither sent any reply notice nor repay the amount. Hence, the complainant has filed a private complaint.

4.The accused was furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the learned Additional District Munsif, Tiruchendur, for trial and after framing charges under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act'), when the accused person was questioned, she pleaded not guilty.

5.In order to prove the prosecution case, P.W.1 was examined and Exs.P.1 to P.4 were marked. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances available against her, she denied the same as false. On the side of the accused, D.W.1 to D.W.5 were examined and Exs.D.1 and D.2 were marked. The trial court, after hearing either side and after considering the materials, both oral and documentary evidence on record, convicted and sentenced the accused person, as stated hereunder:-

Section	Sentence
U/s 255(2) Cr.P.C.,	Convicted and sentenced to undergo simple imprisonment for a period of one (1) year
U/s 357(3) Cr.P.C.,	To pay compensation for a sum of Rs.4,36,350/- to the complainant, within a period of one month, in default to undergo three months simple imprisonment

6.Aggrieved by which, the accused has filed an appeal in Crl.A.No.52 of 2010 before the Lower Appellate Court. The Lower Appellate Court has modified the conviction and sentence granted by the Lower Court as stated below:-



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Section	Awarded by the Lower Court	Modified by the Lower Appellate Court
U/s 255(2) Cr.P.C.,	Convicted and sentenced to undergo simple imprisonment for a period of one (1) year	Convicted and sentenced to undergo one month simple imprisonment
U/s.357(3) Cr.P.C.,	To pay compensation for a sum of Rs.4,36,350/- to the complainant, within a period of one month, in default to undergo three months simple imprisonment	Set aside

7.Against which, the present Criminal Revision Case is filed by the accused.

8.The learned counsel appearing for the petitioner would submit that the Courts below failed to consider the fact that the complainant has no financial capacity and source of income to lend the huge amount of Rs.4,25,000/- to the accused. In order to prove his financial capacity, the petitioner has examined D.W.3 Bank Manager, where the said cheque was presented and the complainant has account. He clearly deposed that the entire transaction for the past three years is upto Rs.4,000/- to Rs.28,000/- and he do not have financial capacity to advance the loan amount to the accused. Further, the transaction was in between one Johnson, who examined as D.W.2 and the accused and the entire amount borrowed from the said Johnson D.W.2 was repaid. However, the security cheque possessed by D.W.2 was misused by the respondent and he has filed this false case against the accused. He would further submit that the respondent / complainant passed away.

9.This case is filed in the year 2015. However, till date, the petitioner has not taken any steps to serve notice to the respondent.

10.Considering the fact that no one comes forward to represent the respondent and considering the pendency of this petition from the year 2015 itself, this Court is inclined to decide the case with the materials available on record.

11.This Court is of the view that though the petitioner has raised several grounds, all those grounds were already elaborately discussed by the Courts below and further, the main ground raised by the learned counsel appearing for the petitioner is that there was a



business transaction between the petitioner and D.W.2. The petitioner has borrowed a sum of Rs.1,00,000 from D.W.2 and claims that she has issued two cheques for the purpose of security and also two pro-notes and thereafter, she repaid a sum of Rs.1,10,000/- to D.W.2, however, the said cheques were not returned to the petitioner and the said cheque was misused by the complainant. However, the petitioner / accused did not launch any criminal case against the complainant or his son-in-law, till filing of the proceedings under Section 138 of the Act. In the absence of any materials to prove that the cheque was misplaced prior to the issuance of the cheque to some other party, this Court do not find any error in the order of the Courts below. Hence the judgment and conviction rendered by the Lower Appellate Court is confirmed and the same does not call for any interference.

12. Accordingly, this Criminal Revision Case stands dismissed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Myr

To

1.The Additional District and Sessions Judge,
(FTC No.II), Tuticorin.

2.The Additional District Munsif,
Tiruchendur.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11822[F] dated 16/03/2020)

CRL.R.C. (MD) No.276 of 2015

13.03.2020

JMN(23.03.2020) 4P : 4C