



Bail Slip

M.Revathy, W/o.Muthusamy, female, aged about 37 years/2017 (Accused) was released on bail vide Court order dated.15.06.2017 made in Crl.MP(MD)No.4335/2017 in Crl.R.C(MD)No.430/2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.430 of 2017

M.Revathy

... Petitioner/Accused

Vs

G.John

... Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the Judgment and Order passed in C.A.No.29 of 2016, dated 25.04.2017 by the II Additional Sessions Judge, Tuticorin confirming the Judgment and Order passed in C.C.No.544 of 2012, dated 06.07.2016 on the file of the Fast Track Court (Magisterial Level), Thoothukudi.

For Petitioner :Mr.K.A.Raamakrishnan

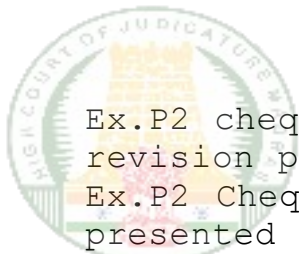
For Respondent : Mr.Antony S.Prabakar

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent / complainant.

2.The respondent filed C.C.No.544 of 2012 on the file of the Fast Track Court (Magisterial Level), Thoothukudi, against the petitioner for the offence under Section 138 of the Negotiable Instruments Act.

3.The case of the complainant is that the accused came in contact with the revision petitioner, when he approached the Taluk Office regarding one patta matter. The accused is said to have told the complainant that she is having 20 cents of land at Kottampalli Village and that, she is ready to sell the same to the complainant for a sum of Rs.5,50,000/-. The complainant is said to have paid the sale consideration of Rs.5,53,050/- in instalments. The accused is said to have executed a pro note and also an Yathasthu. The accused did not honour her commitments. When the complainant pressed for return of the amount, Ex.P1 and



Ex.P2 cheques totalling a sum of Rs.5,53,050/- were issued by the revision petitioner. Ex-P1 Cheque is for a sum of Rs.50,000/-. Ex.P2 Cheque is for a sum of Rs.5,03,000/-. The first cheque was presented for collection on 20.11.2011. It was returned unpaid on the same date. Ex.P6 notice was issued on 21.12.2011. The second cheque was presented for collection on 07.12.2011 and was returned on 19.12.2011 and Ex.P9 notice dated 07.01.2012 was issued. The accused admittedly received both the notices. Since she did not comply with the demand set out in the notices, C.C.No.544 of 2012 came to be filed. Before the trial Court, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P14. The accused examined one Iyyankani and Indhrani as D.W.1 and D.W.2. The learned trial Judge found the accused guilty and sentenced her to undergo one year simple imprisonment and also directed her to pay a sum of Rs.5,53,000/- as compensation. Questioning the same, the revision petitioner filed Crl.A.No.29 of 2016 before the Second Additional District Sessions Judge, Thoothukudi. Vide Judgment dated 25.04.2017, the appeal was dismissed and the Judgement of the trial Court was confirmed. Challenging the same, this revision case came to be filed.

4.The learned counsel for the revision petitioner pointed out that the private complaint came to be filed in view of the dishonour of Ex.P1 and Ex.P2 cheques. He pointed out that Ex.P1 cheque was dishonoured on 20.11.2011. But Ex.P6 statutory notice was issued only on 21.12.2011 that is after a lapse of full 30 days.

5.Arguments were advanced by the learned counsel appearing for the revision petitioner based on the averments set out in Ex.P6 legal notice dated 21.12.2011. On the face of it, it appeared that the notice issued by the complainant is barred by limitation. But as rightly pointed out by the learned counsel appearing for the complainant, Ex.P1 cheque is dated 20.11.2011 and it was presented for collection in the City Union Bank on 19.12.2011 and an intimation was received from the said Bank on the same date and intimation of dishonour was received by the complainant on 20.12.2011 and Ex.P6 notice was issued thereafter. Thus, the learned counsel for the complainant has proved that the issuance of Ex.P6 notice is well within time. I must express my serious dissatisfaction over the carelessness manner, in which, Ex.P6 notice was typed. Paragraph No.4 of Ex.P6 reads as follows:-

"4.When my client presented the Cheque No.278451, dated 20/11/2011 for collection as confirmed by you through his bankers union Bank of India, on 20.11.2011, the cheque was returned with the endorsement "funds insufficient" in your bank account. My client received the notice of dishonour on 20.11.2011".



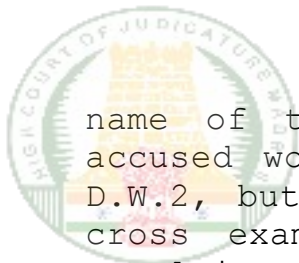
6.The learned counsel for the accused submitted that the very issuance of the notice was barred. In fact, on the last occasion, I found *prima facie* force in the said submission. The learned counsel for the complainant also during the last hearing, stated that he may not have anything to say as far as Ex.P1 cheque is concerned. When I began to dictate the order, the learned counsel for the complainant interjected and submitted that this may be running contrary to record. There upon, this Court verified the record and came to the conclusion that Ex.P1 cheque was presented for collection on 19.12.2011 and that, intimation of dishonour was received on 20.12.2011. I only wish that the counsel, who issued notice, had given the correct dates. However, the first contention urged by the learned counsel for the accused is rejected.

7.The learned counsel for the accused would further contend that the cheques were obtained under coercion in the local police station and that, therefore, this Court should not permit invocation of Section 139 of Negotiable Instruments Act in favour of the unscrupulous complainant.

8. In this regard, the learned counsel for the accused took me through the testimony of the defence witnesses. He also would point out the unnatural conduct on the part of the complainant. He stated that no prudent buyer would pay the entire consideration amount in advance even before the preliminary formalities of sale transaction are concluded. According to the learned counsel for the accused, the father of the accused was seriously ill and that, for his medical treatment, the accused had borrowed a sum of Rs.1,50,000/- from the complainant. In order to get back the said amount, Ex.P1 and Ex.P2 were obtained under coercion.

9.Though there is *prima facie* material to show that the cheques had been obtained during the course of settlement talks in the local police station, I am not able to fully agree with the contentions of the learned counsel for the accused. As rightly pointed out by the learned counsel appearing for the complainant, the signatures appearing in the complaint cheques have not been denied by the accused. If she had to part with the said cheques under coercion in the Thermal Nagar Police Station, nothing prevented the accused to lodge a complaint before the superior officers after the occurrence had taken place. It is also pointed out by the learned counsel for the complainant that even though the accused received Ex.P6 and Ex.P9 notices, she did not choose to respond. She also did not enter the witness box.

10. The testimony of D.W.2 also appears to be a bit doubtful. She claims that she is a close relative. But in the cross examination, she stated that she is not even aware of the



name of the accused. Of-course, the learned counsel for the accused would state that she would not rely on the testimony of D.W.2, but only on the answers elicited by the complainant in the cross examination of D.W.1. It is seen there from that the complainant had given a complaint against the accused before the Thermal Nagar Police Station. It also appears that a kind of settlement was arrived at between the parties and pursuant to the same, the cheques came to be issued. D.W.1 would claim that the accused merely signed in the said two cheques and when the settlement process was going on, she received information that her father passed away and that, therefore, she abruptly left the police station.

11.This Court is unable to attach much weight to the said testimony of D.W.1. This is because, the complainant had also marked Ex.P3-Pro note. In the said pro note, it has been clearly mentioned that since the accused had spent the entire amount of Rs.5,53,000/- received from the complainant from 07.04.2011 to 01.05.2011, she is executing the aforesaid pro note. I am more than satisfied that the complainant had established that the complaint cheques Ex.P1 and Ex.P2 were issued towards discharge of enforceable liability. In this view of the matter, the conviction imposed on the revision petitioner is confirmed.

12. However, taking note of the fact that the petitioner is a woman and the other mitigating circumstances pleaded by the learned counsel for the revision petitioner, some modification in the matter of sentence is called for. The revision petitioner is given five months to deposit the cheque amount of Rs.5,53,000/- to the credit of C.C.No.544 of 2012 on the file of the Judicial Magistrate, Fast Track Court, Thoothukudi. On such deposit, the same can be withdrawn by the complainant without notice to the petitioner. If the petitioner deposits the said amount within the time stipulated above, the sentence imposed on the petitioner will not be enforced. If the petitioner fails to deposit the said amount, the petitioner will have to undergo six months simple imprisonment.

13.With this modification in the matter of sentence, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Fast Track Court (Magisterial Level),
Thoothukudi.
- 2.The Chief Judicial Magistrate,
Tuticorin.
- 3.The II Additional Sessions Judge,
Tuticorin.

Copy to

The Section Officer-2 copies
Criminal Section(Records)
Madurai Bench of Madras High Court, Madurai.

Crl.R.C (MD) No.430 of 2017
15.12.2020

KM (08.01.2021) 5P 6C