



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.99 of 2017
and
Crl.M.P(MD).No.859 of 2017

R.Sheela Devi

... Petitioner

Vs

V.Kalaiarasan

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order passed in C.A.No.15 of 2015 dated 16.03.2016 on the file Fast Track Mahila Court, Karur modifying the order in C.C.No.537 of 2013 dated 30.01.2015 on the file of the learned Judicial Magistrate (Fast Track Court at Magisterial Level), Karur.

For Petitioner : Mr.C.Murugavel

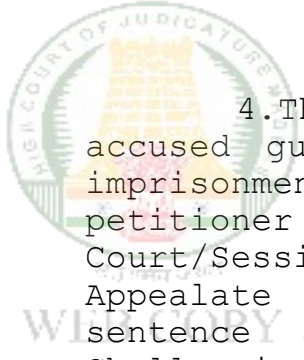
For Respondent : Mr.G.Thiruvarutselvan

ORDER

Heard the learned counsel on either side.

2.The revision petitioner was prosecuted for the offence under Section 138 of the Negotiable Instrument Act in C.C.No. 537 of 2013 on the file of the Judicial Magistrate/Fast Track Court at Magisterial level, Karur. The case of the complaint is that the revision petitioner borrowed a sum of Rs.1,50,000/- on 15.06.2013 and towards discharge of the said liability issued Ex.P.1-cheque, dated 10.07.2013. When the same was presented for collection, it was returned dishonoured. The complainant issued Ex.P.4- legal notice, dated 12.07.2013. The accused received the notice and sent reply, dated 23.07.2013 (Ex.P.6). Since the demand set out in the notice was not complied with by the revision petitioner, the complainant filed the aforesaid private complaint.

3.The complainant examined himself as P.W.1 and marked Ex.P1 to P6. The accused examined herself as D.W.2 and one Parameswari D.W.1 and marked Ex.D1.



4.The Court below by judgment dated 30.01.2015 found the accused guilty and sentenced her to undergo three months simple imprisonment and fine of Rs.2000/- was also levied. The revision petitioner filed C.A.No. 15 of 2015 before the Mahalir Fast Track Court/Sessions Judge, Karur. By judgment dated 16.03.2016, the Appellate Court while confirming the conviction, modified the sentence and reduced it to one month simple imprisonment. Challenging the same, this Revision Case came to be filed.

5.The learned counsel through whom the revision case was filed reported 'no instructions'. Therefore, this Court appointed Legal Aid Counsel. The Legal Aid Counsel reiterated all the contentions set out in the memorandum of grounds. He would contend that the revision petitioner has engaged the services of one Siva @ Sivasamy as a broker to conclude a land transaction and that the complaint cheque was given to him for security purposes. The relationship between the revision petitioner and the said Siva @ Sivasamy came under strain due to some misunderstanding. The specific allegation of the revision petitioner is that the Siva @ Sivasamy misused the cheque and through the respondent herein presented the same.

6.As rightly pointed out by the learned trial Magistrate, the revision petitioner failed to establish her defence. Though the standard of proof is preponderance of probability, the petitioner miserably failed to do so. The revision petitioner did not summon the said Siva @ Sivasamy. Even the original document in respect of Ex.P.1 could not be produced. More than anything else, it is improbable that a person dealing in land would give a signed blank cheque to a broker. The Court below came to the conclusion that the version projected by the accused is inherently improbable. In fact, the petitioner had not sent any communication to Siva @ Sivasamy seeking return of the cheque said to have been given by her. She has not given a police complaint. Thus, looked at from any angle, the defence projected by the revision petitioner does not carry any credibility. In this view of this matter, I do not find any reason to differ with the finding given by the Courts below and the conviction imposed on the petitioner is confirmed but the petitioner being a lady, some modification in the matter of sentence is called for.

7.The petitioner is directed to deposit the cheque amount of Rs. 1,50,000/- to the credit of CC No. 537 of 2013 on the file of the learned Judicial Magistrate, Karur, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit, the complainant can withdraw the same, without notice to the revision petitioner. If the petitioner fails to deposit the cheque amount within a time stipulated above, the sentence imposed by the Appellate Court will be enforced. If the amount is deposited, the sentence will not be implemented.



8. With these modifications in the matter of sentence, the Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (RTI Act)

/ /2021

Sub Assistant Registrar(CS)

rmk

To

1. The Judge, Fast Track Mahila Court, Karur.

2. The Judicial Magistrate (Fast Track Court at Magisterial Level),
Karur.

Crl.R.C(MD) .No.99 of 2017
15.12.2020

(SV2) CO

AP(03/02/2021) 3P 3C