IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2021

PRONOUNCED ON : 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1010 of 2018

S.Senthil Kumar ... Petitioner/Complainant

Vs.

1. The District Superintendent of Police,
   Tirupur District, Tirupur.

2. The Inspector of Police (Crime Branch)
   Tirupur.

3. The Sub Inspector of Police,
   Tirupur.

... Respondents/Respondents

4. Sandhya ... 4th Respondent/Accused

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C. to set aside the order passed in C.M.P.No.2497 of 2018, dated 26.07.2018, on the file of the learned Judicial Magistrate No.IV, Tirupur.

For Petitioner	:	Mr.S.Kolandasamy (Physical Hearing)
For R1, R2 & R3	:	Mr.S.Vinoth Kumar Public Prosecutor
For R4	:	Mr.A.Mohamed Ismail

O R D E R

Unsuccessful private complainant is the revision petitioner herein.

2.The complaint has been filed before the learned Judicial Magistrate No.4, Tirupur, under Section 2(d) read with Section 190 of Cr.P.C against the fourth respondent who is the Branch Manager, State Bank of India viz., Sandhya, W/o.BenoseRajagopal, in C.M.P.No.2497 of 2018, for the offence under Sections 217 and 166(A) of IPC and the same was dismissed and hence, the Criminal Revision Case.

3.Facts of the case:

(a).The revision petitioner lodged a private complaint against the fourth respondent herein before the Judicial Magistrate IV, Tirupur in C.M.P.No.2497/2018, alleging that his relative one Kathiravan was owning a land in Survey No.125/1 in Pongupallayam Village, Kalampalayam, Tirupur District, to an extent of 33,831 Sq.ft and he mortgaged, the same with the Indian Overseas Bank, Tirupur District Court Complex Branch, in which there was an outstanding amount to the tune of Rs.60,00,000/- and he was not in the position to repay the amount.

(b).The said Kathiravan approached the revision petitioner herein/complainant to sell the land and settle the amount payable to the bank. Accordingly, the friend of the revision petitioner herein/complainant one Harikrishnan introduced one Binose Rajagopal, whose wife is working as Branch Manager, State Bank of India, Kovaipudhur Branch and the fourth respondent agreed to provide the loan to the tune of Rs.1,00,00,000/- and for the purpose of sanctioning the loan she has demanded money and accordingly the revision petitioner herein/complainant has paid a sum of Rs.13,00,000/- and after the receipt of the money, the fourth respondent demanded further sum of Rs.15,00,000/-. Since, the revision petitioner herein/complainant was not in a position to pay such a huge amount of money, he demanded the fourth respondent for the return of Rs.13,00,000/-, which was already paid by him.

(c).Thereafter, the fourth respondent had issued a cheque to the revision petitioner herein/complainant for a sum of Rs.8,00,000/- and she had agreed to pay the balance sum of Rs.5,00,000/- within a period of three months. When the cheque was presented for realisation, it was returned with the endorsement saying account was closed. When the news about the dishonour of the cheque was informed to the fourth respondent's husband, who abused the revision petitioner herein/complainant and threatened him with dire consequences.

(d)Hence, the revision petitioner herein has given a complaint to the first respondent on 26.02.2018 and received receipt bearing 100/2018. Since no action was taken by the first respondent, the revision petitioner herein/complainant has filed the above said private complaint against the fourth respondent before Judicial Magistrate-IV, Tirupur.

(e).During the course of trial, the complainant was examined and documents were marked. The Learned Magistrate by an order dated 26.07.2018 dismissed the private complaint filed by the petitioner. Hence, the present Criminal Revision Case.

4.Heard the respective learned counsels and perused the materials placed on record.

5(a).The learned counsel for the revision petitioner herein/complainant would contend that the fourth respondent had received money from the revision petitioner herein/complainant to the tune of Rs.13,00,000/- for sanction the loan in order to pay outstanding loan with the Indian Overseas Bank. Having not satisfied with the amount earlier given viz., Rs.13,00,000/- (to the fourth respondent by the revision petitioner herein), the fourth respondent being the officer of the bank, again demanded further amount of Rs.15,00,000/-.

5(b).Further, the learned counsel for the revision petitioner herein/complainant would draw my attention to the fact that it is a specific plea of the private complainant that when he demanded for the return of the alleged amount of Rs.13,00,000/-, the fourth respondent had issued the disputed cheque and the cheque of the fourth respondent is in possession of the private complainant, the said fact said to have been not considered by the Trial Court. Since no case has been registered before the police, the revision petitioner herein has moved private complaint.

5(c).In short, the plea is that the fourth respondent being the Branch Manager of State Bank of India, Kovaipudhur Branch, had misused her capacity for sanctioning the loan amount and for such sanction, she has demanded and received the amount of Rs.13,00,000/- and when she further demanded additional amount, the private complainant expressed his inability and asked to return the advanced amount paid. Hence, the fourth respondent herein had issued the cheque which was subsequently bounced.

6.On receipt of the complaint from the District Crime Branch, the second respondent herein called both the parties for enquiry and the enquiry was conducted on 18.04.2018, and no documentary evidence was produced by the petitioner to the alleged amount of Rs.13,00,000/- said to have been paid by complainant to the fourth respondent herein for getting loan. The revision petitioner herein/complainant has not submitted any witnesses or evidence for alleged threatening. After completion of the enquiry closure report was submitted before the first respondent viz., District Superintendent of Police, Tirupur District, on 23.05.2018. Accordingly, the said private complaint has been filed.

7.The learned counsel for the fourth respondent would contend that the husband of the fourth respondent is not living with her due to the financial dispute and the some of the cheques taken by her husband. Due to the strain relationship between the fourth respondent and her husband, the cheque has been misused by the husband through his friend namely the petitioner herein. The revision petitioner herein/complainant is totally stranger to the fourth respondent since her husband has misused the cheque, she has not given any complaint to the police.

8.After hearing rival submissions and perusal of the records, it reveals that as per the complaint, fourth respondent, who is the Branch Manager of the State Bank of India, Kovaipudhur Branch, through her husband, has agreed to provide loan to the tune of Rs.1,00,00,000/- to the complainant. For which they agreed, the fourth respondent has demanded a sum of Rs.13,00,000/- and the complainant had paid Rs.8,00,000/- and when the complainant demanded for return of the money, the fourth respondent gave the cheque and the said cheque was also bounced as account closed. The cheque is dated 09.02.2018. The Inspector, who has conduced the enquiry as stated that the account relating to the cheque was closed in the year 2015, so stated in her objection also assumes significance.

9.With regard to the cheque it is a specific stand of the fourth respondent that due to the strain relationship between her and her husband, her husband left matrimonial home and living separately. While he moving away from the home he has taken some of the cheques and the same has been presented through PW1 and furthermore, she has given explanation as to how her cheque was went to the hands of PW1/private complainant. During the enquiry with the second respondent/Inspector of police, PW2 has stated that it is only a hearsay witness. The Trial Court has rightly observed that there is no positive evidence to believe version of complainant as to the pleading that the fourth respondent has instructed the private complainant in the nature of offering the loan and obtained Rs.8,00,000/- and thereafter, issued the cheque and it was bounced.

10.It is always open to the private complainant to file necessary application under Negotiable Instruments Act, if he be so advised. With regard to the alleged transaction of sanction of the loan by the fourth respondent in her official capacity as Branch Manager, State Bank of India, there is no positive evidence much less any evidence its mere the oral assertion. The second respondent herein /Inspector of police after conducting enquiry has closed the petition.

11.The learned Magistrate has also expressed the very same view that there is no positive evidence regarding alleged money transaction. The fourth respondent herein has also given an acceptable explanation as to how her cheque has reached the hands of the private complainant in view of the strain relationship between herself and her husband.

12.The point for consideration is that whether the private complainant has made out any prima facie case for the alleged offence under Sections 217 and 166(A) of IPC. The fourth respondent herein as Branch Manager of the State Bank of India, Kovaipudhur and as such she is a public survent, but however, the private complainant has not made any positive evidence [for disobeying direction of law with a material notice to save person from punishment or property from the forfeiture] neither in the complaint nor in his evidence. After perusing the complaint, this Court finds that basic ingredients of Section 166(A) and 167 of IPC are not made out.

13.In the decision reported in K.K.Patel Vs. State of Gujarat (2000) 6 SCC 195", the Hon'ble Supreme Court has held as follows:

> "The indispensable ingredient of the offence under Section 166 IPC is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which she should have conducted himself as such public servant.

14.The learned Magistrate has appreciated the version of PW1 and also taken note of the version of PW2 is hearsay evidence. For the offence under Sections 166(A) & 167 of IPC, the twin ingredients as extracted supra are to be satisfied.

Merely because the fourth respondent being officer of the bank namely the public servant, the mere assertion which is found to be not true by the investigation officer nor any positive evidence has been produced before Court. Hence, in the absence of any positive evidence to show prima facie, such public officer have conducted or acted herself in disobedience to any legal direction, the trial Magistrate has rightly rejected the complaint.

15.Accordingly, the order passed by the learned Magistrate is well merited and well considered and the same does not suffer from any illegality or irregularity, warranting interference in this revisional jurisdiction.

16.Accordingly, this Criminal Revision Case stands dismissed. The order passed in C.M.P.No.2497 of 2018, by the learned Judicial Magistrate No.IV, Tirupur, dated 26.07.2018 is hereby confirmed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Judicial Magistrate No.IV,
   Tirupur.

2. The District Superintendent of Police,
   Tirupur District, Tirupur.

3. The Inspector of Police (Crime Branch)
   Tirupur.

4. The Sub Inspector of Police,
   Tirupur.

5. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.A.Mohamed Ismail, Advocate, S.R.No.54708

Crl.R.C.No.1010 of 2018

GPL(CO)
SU(15/12/2021)