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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.293 OF 2015

M.Sahina Parveen

... Petitioner/Accused

.Vs.

1. Johnson
2. The State represented by,
The Public Prosecutor, Erode.
(R2 Given up)

... Respondents

PRAYER:-

This Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., against the judgment passed in C.A.No.34 of 2014, on the file of the learned II Additional Sessions Judge, Erode, dated 29.01.2015, confirming the judgment passed in S.T.C.No.501 of 2012 on the file of the Fast Track Court No.II, (Magisterial Level), Erode, dated 25.03.2014.

For Petitioner : Mr.C.Veeraraghavan

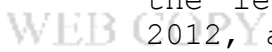
For R1 : Mr.S.N.Chinnaraj

For R2 : Mr.R.Vinoth Raja
Government Advocate

O R D E R

The convicted accused is the revision petitioner herein.

2. This Criminal Revision Case has been filed by the accused to challenge the judgment passed in C.A.No.34 of 2014, on the file of the learned II Additional Sessions Judge, Erode, dated 29.01.2015, wherein the learned judge has confirmed the judgment passed in S.T.C.No.501 of 2012, on the file of the Fast Track Court No.II, (Magisterial level), Erode, dated 25.03.2014, wherein, the learned Judge has held that the accused was found guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced the accused under Section 255(2) of Cr.P.C to undergo rigorous imprisonment for one year



3. The first respondent herein has filed a complaint before the learned Judicial Magistrate No.2, Erode, in STC.No.501 of 2012, alleging that the accused has committed the offence under Section 138 of the Negotiable Instruments Act.

5. The learned Magistrate has held that the offence under Section 138 of Negotiable Instruments Act was proved in the manner known to law and accordingly, laid the conviction and sentence as stated supra.

7. The learned counsel for the convicted accused would contend that complaint itself is premature and no notice was served as required under the Negotiable Instruments Act and that the respondent does not have any financial capacity to lend Rs.5,00,000/- and neither he has received any amount from the complainant nor he has deposited any cheque to the complainant and accordingly seeks to set aside the above said order of conviction and sentence.

9. From the evidence of PW1 and Exs.P1 to P5, it is seen that Ex.P1/cheque was issued from the account of the complainant and the complainant has sent a legal notice of demand on 14.08.2012, which was marked as Ex.P3 and the same was served on the accused on 16.08.2012, the acknowledgment card duly signed by the accused was marked as Ex.P4 and the accused has sent a reply notice on 21.08.2012, which was marked as Ex.P5 alleging that the complainant was stranger to her and demanded the xerox copy of cheque, in compliance of the reply notice the complainant counsel has sent a notice addressing the counsel for the accused on 04.09.2012, which was a rejoinder and not a notice of demand. If the complainant wants to send a notice of demand for the dishonoured cheque, he would have addressed the notice to the accused not to the counsel for accused. Hence,



the notice dated 04.09.2012, which was marked as Ex.P6, addressed to the counsel for the accused was not a demand notice but it was the rejoinder for the legal notice. The complainant was not premature.

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10. Hence, this Court finds that the legal notice was issued in a proper manner and the suit was instituted on 11.09.2012 after fifteen days of the notice served upon the accused on 16.08.2012 and hence, the computation for the period of filing of the complaint from the acknowledgment namely date of service of statutory notice on the accused and not the rejoinder, as contended by the learned counsel for the accused. Accordingly, this Court held that the accused has issued a cheque being dated 27.06.2012 returned on 28.07.2012 with an endorsement "Existing balance insufficient", statutory notice dated 14.08.2012 was duly served upon the accused under the acknowledgment Ex.P4 on 16.08.2012 and reply notice by the accused was dated 21.08.2012 and the complaint was instituted on 11.09.2012 and hence, taking the computation from the date of the acknowledgment/Ex.P4 viz., 16.08.2012, the complaint is in time.

11. The next case contention is that it was not served. From the contents of Ex.P5/reply notice, dated 21.08.2012, it is seen that the legal notice has remitted xerox copy of the dishonored cheque and the same was given under the rejoinder. Therefore, the acknowledgment card duly reflected the fact that the accused was duly served upon the statutory notice as contemplated under Section 138 of the Negotiable Instruments Act.

12. The next point that was urged by the learned counsel for the revision petitioner is that the signature found in Ex.P1/cheque is forged one and in this regard, the accused has not entered the witnesses box her and husband viz., Mansoor Ahamed, was examined as RW1, he could deposed that in the business transaction they have deposited Ex.P1 as a blank cheque without filling but duly signed, as a security towards business transaction and hence, under the Negotiable Instruments Act it is open to the payee to fill up the document and hence, the contention raised by the revision petitioner that it was written by her is of no avail and further contention is that the accused has not signed on Ex.P1.

13. Both the Courts below have concurrently taken the view that the bank has compared the signature found in the cheque with the specimen signature and the cheque was returned on the ground of "insufficient amount" but not on the signature differs. Furthermore, nothing has not prevented the accused for filing application for sending cheque for comparison of the



signature to the Forensic Department. Both the Courts below have concurrently held that in the absence of any positive steps taken by the accused to send the cheque in issue for comparison of signature by the Forensic Department by the accused, the Courts below have rightly rejected the said plea.

14. Furthermore, the Bank has returned cheque only on the point of insufficiency of funds, but not on the point of signature differs.

15. Yet another point is that whether the first respondent/complainant has financial capacity to lend a sum of Rs.5,00,000/-. It is stated by RW1 in the cross examination that there was a business transaction between them and he readily accepted the suggestions made to PW1. During the cross examination no positive steps has been taken to probablise the suggestive case that the first respondent/complainant lacks financial ability to lend a sum of Rs.5,00,000/-. Both the Courts below have accordingly taken the view that since the cheque has been proved in the manner known to law and the same is returned for insufficiency of funds, the private complainant is entitled to the presumption under Section 139 of the Negotiable Instruments Act and accordingly, held that it is for the defence to rebut presumption. Except the bare denial, which was discussed supra, no positive evidence has been let in by the accused, besides she has not entered into the witness box and furthermore, her husband has admitted handing over of the cheque to the private complainant, through he raised the plea of security, which was discussed in the preceding paragraphs and the same was rejected.

16. Furthermore, in view of the fact that the revision petitioner/accused has failed to probablise the suggestive case, the question does not arise for consideration. Accordingly, this Court does not find any reason to interfere with the concurrent finding rendered by the Courts below on the point of conviction. Taking into consideration the fact that the revision petitioner is a woman, sentence is reduced to three months, fine is kept in tact.

17. With the above observations, this Criminal Revision Case stands partly allowed to the limited extent as indicated above.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Erode.

2. The Fast Track Court No.II,
(Magisterial Level), Erode.

3. The Public Prosecutor,
Erode.

4. The Public Prosecutor,
High Court, Madras.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras.

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NR(CO)
PBS/09/09/2021