



Bail Slip

The Petitioner/Accused namely Mariam Varghese W/o.Mathew in Crl.R.C.No.576 of 2015 was released on bail vide court order dated 17/06/2015 in MP.1/15 in Crl.R.C.No.576 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.576 of 2015

Mariam Varghese ... Petitioner/Appellant/Accused

.. Vs ..

P.ShanmugamRespondent/Respondent/Complainant

Prayer:- Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code, to set aside the conviction imposed in the judgment dated 20.02.2015 made in C.A.No.152 of 2014 on the file of the learned Fourth Additional District Sessions Court, Coimbatore confirming the judgment dated 22.09.2014 made in S.T.C.No.258 of 2012 on the file of the learned Judicial Magistrate Fast Track Level No.2, Coimbatore (C.C.No.195 of 2012 on the file of the Judicial Magistrate No.6, Coimbatore).

For Petitioner : Mr.Harish
For Mr.N.Manokaran

For Respondent : Mr.V.Ashok Kumar
Legal-Aid-Counsel

O R D E R

The convicted accused is the revision petitioner herein.

2. The petitioner has filed this revision against the conviction imposed in the judgment dated 20.02.2015 made in C.A.No.152 of 2014 on the file of the learned Fourth Additional District Sessions Court, Coimbatore, confirming the judgment dated 22.09.2014 made in S.T.C.No.258 of 2012 on the file of the learned Judicial Magistrate Fast Track Level No.2, Coimbatore (C.C.No.195 of 2012 on the file of the Judicial Magistrate No.6, Coimbatore) sentencing her to undergo one year simple



imprisonment with fine of Rs.5000/- in default to undergo two months simple imprisonment for the offence under Section 138 of Negotiable Instruments Act.

3. The petitioner submits that the respondent herein filed a private complaint in S.T.C.No.258 of 2012 on the file of the learned Judicial Magistrate Fast Track Level No.2, Coimbatore (C.C.No.195 of 2012) on the file of the Judicial Magistrate No.6, Coimbatore, against the petitioner herein alleging that she had borrowed a sum of Rs.5 lakhs and issued a cheque and when it was presented for collection on 21.01.2012, it was returned unpaid with an endorsement 'funds insufficient' on 23.01.2012 and he issued a legal notice on 26.01.2012, thereafter filed the above complaint before the Court.

4. The petitioner submits that during the course of the trial, the respondent herein examined himself as P.W.1 besides marking Exs.P1 to P4. The trial Court, without taking note of the defence put forth by the petitioner herein, erroneously convicted her by sentencing the petitioner to undergo simple imprisonment for one year for the offence under Section 138 of Negotiable Instruments Act. The appeal filed by the accused in C.A.No.152 of 2014 before the Appellate Court was also dismissed on 20.02.2015. Hence the revision.

5. The petitioner submits that there was no transaction between the parties, whereas the cheque has been misused and the present complaint has been filed to get an unlawful gain. The petitioner submits that she has dislodged the presumption even though the respondent had failed to prove the transaction between the parties by producing the documents. The petitioner has taken the task of rebutting the presumption and she has falsified the version pleaded by the respondent.

6. The learned counsel for the revision petitioner contended that the cheque was not issued to one Shanmugam/the private complainant whereas it was issued to one Kunjumon to meet the medical expenses and also challenged the financial capacity of the drawee to issue the amount. The transaction alleged under cheque was not duly reflected in the income tax returns submitted by the respondent. The respondent herein filed a private complaint in S.T.C.No.258 of 2012 alleging that the revision petitioner/accused has borrowed a sum of Rs.5 lakhs on 15.12.2011 for business purposes and to discharge the debt, she has issued Ex.P1 cheque and on presentation on 23.01.2012 the same was returned with endorsement of insufficient funds and after issuing P3 legal notice which was served upon the accused under Ex.P4 he has instituted the case. The accused has not given any reply legal notice. So is the evidence before the trial Court.



7. The trial Court has held that the respondent/complainant is entitled for presumption under Section 139 of the Negotiable Instruments Act and to discharge the rebuttal presumption, the accused had examined D.W.1 Kunjumon his evidence was disbelieved. Accordingly, the trial Court laid the conviction as stated supra. In appeal in C.A.No.152/2014 was dismissed and hence the revision.

8. After perusing the evidence of P.W.1 coupled with documentary evidence of Ex.P1 to Ex.P4, I find that both the Courts below has rightly come to the conclusion that the respondent/private complainant is entitled for presumption under Section 139 of Negotiable Instruments Act.

9. On the point of rebuttal presumption, the accused has examined D.W.1 Kunjumon who, in his evidence has stated that his son has met with an accident and hence he was taking treatment at Laksho hospital, Ernakulam. To meet the medical expenses he has approached the accused/ husband Mathew Jacob and Mathew Jacob has given 4 cheques which was signed by his wife. It was given to the hospital and after settlement at the time of the discharge, they have returned the two cheques however, he had not returned the cheques and hence could contend that these cheques have been given as a security to meet the medical expenses of the son of the Kunjumon.

10. Though a specific case has been projected by the D.W.1, none of the medical records of the alleged illness of the son of the Kunjumon was brought on record. No document is produced from Ernakulam Hospital regarding the payment made through the cheque or made by utilizing the cheque given by the accused.

11. Furthermore, since it is a specific evidence of the D.W.1 Kunjumon, Ex.P1 along with the other cheques were given through the husband of the accused Mathew Jacob for the reasons best known the husband of the accused, who is said to have handled the cheque from the accused to the defacto-complainant, was not examined. He is not a third party and he is the husband of the accused and hence the trial Court disbelieved the evidence saying that it is only an after thought to create a defence and accordingly rejected the case.

12. It is also to be noted that had there been any such incident of middleman involving in payment of the medical expenses and payment has been made to the hospital authorities towards the medical treatment of son of Kunjumon (D.W.1), they could have very well given the said documents before the trial Court or at the appellate stage. Neither in the appeal, they have not taken any steps to probablize the suggestive case. In



the absence of probablization of suggestive case, the trial Court and the appellate Court has concurrently held that the accused has miserably failed to probabalize the suggestive case and accordingly laid the conviction and the said conviction under Section 138 of Negotiable Instruments Act is sustainable in law.

13. On the point of quantum of sentence, the accused, being a lady, the learned counsel for the revision petitioner contended that some leniency could be shown.

14. Taking into consideration the amount mentioned in the cheque and the accused being a lady, while confirming the conviction this Court hereby reduces the sentence from period of one year to six months. In other aspects, the order of the Courts below do stand.

15. Accordingly, this Criminal Revision Petition is partly allowed to the limited extent of sentence only.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Fourth Additional District Sessions Judge,
Coimbatore

2.The Judicial Magistrate Fast Track Level No.2,
Coimbatore

3.The Judicial Magistrate No.6,
Coimbatore.

4.The Chief Judicial Magistrate,
Coimbatore.

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No.46945

Cr1.R.C.No.576 of 2015

PVS (CO)
CB(22/10/2021)