BAIL SLIP

The Appellant/Accused namely M.Sumathi, W/o.Mahendran in STC No.3124 of 2008, 22.03.2011 on the file of the Learned Judicial Magistrate No.II at Hosur, She was release on bail as per the order of this Hon'ble Court dated 24.08.2015 in Crl MP.1 of 2015 in Crl RC No.727 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 25.08.2021	Date of Pronouncing Order 22.09.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.727 of 2015

M.Sumathi .. Petitioner

Vs.

Sivaji .. Respondent

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order dated 31.07.2013 in C.A.No.26/2011, passed by the learned Additional District & Sessions Judge, Krishnagiri, confirming the conviction and sentence dated 22.03.2011 passed as against the revision petitioner by the learned Judicial Magistrate No.II, Hosur in S.T.C.No.3124/2008.

For Petitioner : Mr. S. Anil Sandeep

For Respondent : Mr. R. Jayaprakash

O R D E R

The matter is heard through "Video Conference".

2. The convicted sole accused is the revision petitioner herein. The respondent herein filed a private complaint under Section 200 of Cr.P.C., alleging the commission of offence under Section 138 of Negotiable Instruments Act, against the revision petitioner herein.

3. The case of the private complainant/P.W.1 is that (a) he is running a Travels under the name and style of

M/s.Kamali Tours and Travels and doing Auto Consultant business. The husband of accused namely Mahendiran was working as a Driver in a vehicle belonging to the complainant. The accused is also very well known to the complainant for past three years. About 6 months back prior to 30.08.2008, the accused received a loan of Rs.2,50,000/- from the complainant for her family expenses and also to discharge sundry debts. The complainant paid the said amount on the same day. For which the accused issued the postdated cheque bearing No.192147, dated 30.08.2008 drawn on Vijaya Bank, Hosur.

3(b) On presentation of said cheque on 30.08.2010, through his Bankeer Hosur Branch Oriental Bank of Commerce, the same returned unpaid on the same day with an endorsement funds insufficient. He got the intimation through memo on 30.08.2008. Hence, the complainant issued legal notice through his counsel by registered post on 09.09.2008 and the same was received by the accused on 10.09.2008. But she has not replied. Hence, this complaint.

4. During trial, P.W.1-Sivaji and P.W.2-Amalraj, were examined and Exs.P.1 to P.6 were marked. On behalf of the defence, accused-Sumathi was examined herself as D.W.1 and no document was marked.

5. The trial Court has convicted the accused and on appeal in C.A.No.26/2011, the learned Additional District and Sessions Judge, Krishnagiri, dismissed the appeal and hence, the revision.

6. The learned counsel for the respondent would contend that the signature of the revision petitioner in the alleged Ex.P1-cheque was made in one ink, whereas, the other details in the alleged cheque have been filled up in another ink, thereby, raising doubt regarding the theory projected by the complainant and also stated that the husband of the accused have never worked as a driver with P.W.1 Travels.

7. Heard, the learned counsel for the respondent.

8. The respondent herein filed S.T.C.No.3124/2018, before the learned Judicial Magistrate, No.2, Hosur, under Section 138 of Negotiable Instruments Act. The private complainant has lend loan on the basis that the husband of the accused herein was working as one of the car driver in the travels running by him and to discharge family debts, the accused, her husband and Mother-in-law came to him for hand loan and it is alleged through P.W.2/Amalraj and this happened six months back prior to 30.08.2008. Since he has not repaid the amount, he presented the cheque and the same was returned as "insufficient funds" and after issuing Exs.P2 to P5 notice, he has instituted the case.

9. On consideration of both oral and documentary evidence, the trial Court come to the conclusion that the signature in Ex.P1-cheque dated 30.08.2008 was admitted and by operation of under Section 20, it empowers the drawee to fill up the cheque and hence, the private complainant is entitled for presumption and according to the trial Court, the accused failed to rebut the presumption and hence, laid the conviction. So, in the lower appellate Court in C.A.No.26/2011 before the Additional District and Sessions Judge, Krishnagiri and hence, the revision by the convicted accused.

10. The learned counsel for the revision petitioner would contend that in the cross examination, P.W.1, has admitted that the writing in the cheque was written by the accused. However, since there is a difference with regard to the signature and contents in filling up the cheque and hence, he is not entitled for statutory presumption under Section 20 of the Act and there is a inconsistency with regard to the alleged employment of the husband of the accused and he drew my attention to the cross examination of P.W.1 and also would contend that in the suggestive case of the accused is that since private complainant was running travels, it is his business practice to get unfilled cheque and from a driver as a security and hence, the same is not meant for encashment.

11. Per contra, the learned counsel for the respondent-private complainant would contend that the accused has not given any reply to the legal notice and though it not a fatal, however it raises suspicion as to the stand taken by the accused. The employment of the accused and the money hand loan went to the private complainant to the accused in the presence of the accused and her husband, her mother-in-law was clearly deposed that though he has not filed Income Tax Return, he had borrowed the amount from P.W.2/Amalraj. Hence, he is entitled for legal presumption under Section 20, 139 of the Negotiable Instruments Act.

12. It is the specific evidence of P.W.1 that while, husband of the accused was working as a driver, he along with his wife/accused and mother in law, came to his house and asked him to give a hand loan of Rs.2,50,000/-, to discharge sundry debts and to meet his family expenses and P.W.1 also deposed that Amalraj has given an amount of Rs.1 lakh for the said Rs.2,50,000/-.

13. Admittedly, it is not a case of the accused that the debt is not legally enforceable debt. Though, notice has been served on the accused for the reasons best known, he has not chosen to given any reply. P.W.2/Amalraj, has deposed regarding handing over Rs.1 lakh to P.W.1/ private complainant and signature in the cheque has been admitted by the accused and hence, both the Courts below have rightly come to the conclusion that P.W.1 is entitled for statutory presumption under Section 139 of Negotiable Instruments Act. The contention has been raised by the learned counsel for the revision petitioner as stated supra, there is a difference in ink between the signature and the other portion of the cheque.

14. Section 20 of the Negotiable Instruments Act, clearly authorises that, the holder of the inchoate stamped and signed instrument. The instrument may be wholly blank incomplete in particular and in either case this holder has the authority to make or complete the instrument as a negotiable one.

15. As per Provision 9 of Negotiable Instruments Act, until the contrary is proved the following presumption shall be made, any negotiable instrument was made or drawn for consideration as that every such instrument, when it has been accepted, endorsed, negotiated and transferred with accepted enclosed and transferred for consideration Section 139 reads as follows:

> It shall be perused unless the cheque is proved that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, is while on plant of any debt or other liability.

16. Hence, the said contention raised by the petitioner counsel stands rejected, in view of the clear statutory provision as discussed supra. In order to rebut the evidence of P.W.1 and P.W.2, the accused has entered the witness box as D.W.1 and deposed that P.W.1 is a total stranger and also stated that he has not received any amount.

17. After going through the evidence of D.W.1, I find that it is a self serving statement to rebut liability. In the absence of any positive evidence to rebut the statutory presumption, both the Courts below have rightly come to the conclusion that the defence has not probabilised the suggestive case, consequently, laid the conviction under Section 138 and the same appears to be sustainable in law.

18. On the point of quantum of sentence, I find that the revision petitioner is young women having two children and hence, sentence of two months simple imprisonment given by the

trial Court, with a fine of Rs.30,000/- cannot stated to be exaggerated. Considering the quantum of the amount, covered under Ex.P1, further both the Court below have also not awarded any compensation and hence, I do not find any reason to reduce the sentence.

19. Accordingly, the criminal revision case is dismissed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

AT

To

1.The Additional District & Sessions Judge,
Krishnagiri

2.The Judicial Magistrate No.II,
Hosur.

Copy to
The Public Prosecutor, High Court, Madras.

+1CC to M/s.R.Jayaprakash, Advocate, SR.No. 48805

Crl.R.C.No.727 of 2015

SR II(CO)
B.VC (29/10/2021)