BAIL SLIP

The Appellant/Accused namely C.Dhanalakshmi, W/o.P.Chandran was directed to be released on bail in and by the order of this court dated 02.07.2014 and made in M.P.No.1 of 2014 in Crl.R.C.No.620 of 2014 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18.11.2021

JUDGMENT PRONOUNCED ON: 24.11.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.620 of 2014

C.Dhanalakshmi ..Petitioner

Versus

G.N.Ramasamy ..Respondent

Prayer : Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., to set aside the judgment made in C.A.No.186 of 2013 dated 18.03.2014 passed by the learned III Additional District and Sessions Judge, Coimbatore modifying the judgment made in C.C.No.392 of 2012 dated 06.12.2014 on the file of the Judicial Magistrate, Fast Track Court - I (Magistrate Level), Coimbatore.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : No Appearance

ORDER

This Revision Case is filed against the conviction of the accused for an offence under Section 138 of Negotiable Instruments Act, 1881, by a judgment dated 06.12.2013, by the learned Judicial Magistrate, Fast Track Court - I, Coimbatore, finding the accused guilty of the offence and imposing a sentence of Rigorous Imprisonment of one year and also a fine of Rs.50,000/- towards compensation and in default of compensation, the petitioner/accused has to undergo simple imprisonment for six months.

2. The said conviction was confirmed by the judgment dated 18.03.2014 by the learned III Additional District and Sessions

Judge, Coimbatore in C.A.No.186 of 2013. However, the Appellate Court modified the sentence as one of fine amount alone, thereby, imposing a fine amount of Rs.62,000/- and in default to undergo simple imprisonment for a period of one year and out of the fine amount of Rs.62,000/-, Rs.60,000/- to be paid as compensation to the complainant.

3. The case of the complainant is that the complainant and the accused are known to each other and the accused borrowed a sum of Rs.40,000/- on 02.03.2009 and in consideration, thereof, executed a promissory note in favour of the complainant, agreeing to repay the said sum of Rs.40,000/- together with interest at the rate of 18% per annum. After repeated demands, the petitioner/accused issued a cheque for a sum of Rs.50,000/- in favour of the complainant, during the first week of August, 2010, bearing cheque No.538076, dated 09.08.2010 drawn on ICICI Bank, Ramnagar Branch, Coimbatore, towards discharge of her liability. The complainant presented the above cheque for encashment through his bankers namely, M/s.Lakshmi Vilas Bank, Sathy Road, Ganapathi, Coimbatore on 09.08.2010 and the same was received by the accused on 13.09.2010. But, however, the accused neither paid the loan amount due under the cheque nor issued any reply and therefore, a private complaint was filed within the period of limitation before the appropriate Court.

4. After recording due sworn statement, the complaint was taken on file and summons were issued and upon questioning, the accused denied the offence. Therefore, the accused stood trial and the complainant examined himself as P.W.1 and examined one Ravi, who is the attesting witness to the promissory note as P.W.2. The copy of the notarised promissory note was marked as Ex.P1, the original cheque was marked as Ex.P2, the return memo as Ex.P3, the copy of the legal notice as Ex.P4, the acknowledgment card as Ex.P5 and the original promissory note as Ex.P6. When the complainant was questioned under Section 313 of the Code of Criminal Procedure, the petitioner admitted the transaction and sought one month time to repay the loan amount. However, the amount was not paid and thereafter, the trial proceeded and one Somasundaram, Manager of I.C.I.C.I Bank has been examined as D.W.1. However, no documents were marked on the side of the accused. Thereafter, the learned Magistrate considering the material evidence on record and the evidence of P.W.1 through his proof affidavit and cross-examination, whereby, P.W.1 stood his ground as to the facts mentioned in the complaint, evidence of P.W.2 the attesting witness to the promissory note and also, after considering the evidence of D.W.1, the Bank Manager, coupled with the statement of the petitioner herein, at the time of questioning under Section 313 Cr.P.C., came to the conclusion that the complainant has duly discharged his burden of proving that it is the

petitioner/accused, who had issued the cheque and that the cheque was issued in discharge of legally enforceable debt and therefore, the offence under Section 138 of Negotiable Instruments Act is made out and found the petitioner as guilty and imposed Rigorous Imprisonment for a period of one year and also directed the accused to pay the cheque amount of Rs.50,000/- as compensation.

5. The Appellate Court, once again, reiterating the entire material facts on record, considering the fact that the petitioner/accused did not challenge neither issuing a cheque nor her signature in the promissory note, confirmed the conviction, but, however, modified the sentence as one of fine alone and imposed a fine of Rs.62,000/- on the petitioner/accused and in default to undergo one year simple imprisonment. It was further ordered that out of the fine amount of Rs.60,000/- to be paid as compensation to the complainant/respondent.

6. The learned Counsel appearing for the petitioner submitted that the complainant did not prove the source as to how he got Rs.40,000/- to lend to the petitioner/accused. It is his further submission that in the cross-examination, the complainant had stated that he has got the money from his daughter however, the same is not stated in the complaint. It is further submitted that the promissory note has material alterations and therefore, it should be doubted and conviction cannot be based on the said promissory note. Even in the cheque, only the signature is in English and the other contents are in Tamil, which would demonstrate that it is only the complainant, who has manipulated and misused the cheque.

7. I have given due consideration to the submissions made on behalf of the petitioner. The signature in the cheque is not denied. Neither signature nor the promissory note is denied. Therefore, there is a presumption for the cheque as well as the Negotiable Instrument. So as to dispel the said presumptions, D.W.1 alone was examined on behalf of the defence, but, however, the Bank Manager only had deposed the date of opening of the account and the date of closing of the account and D.W.1's evidence does not, in any manner, advance the cause of the petitioner/accused. This apart, the complaint contains material averments and not stating the fact that the complainant got the money from the daughter is not fatal to the case of the complainant. Each and every detail of the evidence need not to be mentioned in the complaint. Similarly, apart from making a vague allegation, the accused was not successful in his cross-examination of P.W.1 or the attesting witness, who is a disinterested witness.

8. Under these circumstances, similarly, just because the

contents of the cheque are filled up in Tamil and the signature is in English, the same will not lead to any conclusion whatsoever as to proof of any suspicion about the cheque nor rebutting the presumption. Therefore, I do not find any error in the Trial Court and the Appellate Court in finding the accused guilty for the offence under Section 138 of Negotiable Instruments Act.

9. Considering the fact that the petitioner/accused herein has fairly admitted the transaction and sought for one month time in her statement under Section 313 of Cr.P.C., considering the fact that the petitioner/accused is a lady, the Appellate Court has rightly modified the sentence as one of fine alone and in default, to undergo one year Simple Imprisonment.

10. Under these circumstances, the Criminal Revision Case fails and is accordingly, dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

grs

To

1. The III Additional District and Sessions Judge,
   Coimbatore.

2. The Judicial Magistrate,
   Fast Track Court - I (Magistrate Level),
   Coimbatore.

3. The Chief Judicial Magistrate,
   Coimbatore.

4. The Superintendent,
   Central Prison,
   Coimbatore.

Crl.R.C.No.620 of 2014

KSM(CO)
RGA(03/12/2021)