



Crl.R.C.No.786 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2022

Pronounced on : 13.10.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

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B.Cecilia Snegalatha,
Wife of Amalraj,
D.No.28, Daksha Garden,
Bharathiar University Post,
Coimbatore – 641 046.

... Appellant/Accused

/versus/

L.P.Kaniammal,
Wife of Lingasamy,
D/No.26C, D/Kandasamy Nagar,
Saravanampatty,
Coimbatore.

... Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to set aside the order dated 29.04.2017 passed in Criminal Appeal No.136 of 2015 on the file of the I Additional District and Sessions Judge, Coimbatore, confirming the order dated 23.04.2015 passed in C.C.No.469 of 2013 on the file of the Judicial Magistrate Fast Track Court, No.1, Magisterial Level at Coimbatore.

For Petitioner : Mr.Sharath Chandran

For Respondent : Mr.S.Ramesh Kumar



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deposed about the transaction and marked the pro-note dated 09/08/2007 executed by the petitioner in favour of the respondent as Ex.P-1. The cheque drawn for Rs.1,00,000/- in favour of the respondent, the return memo, lawyer notice and the acknowledgement card to prove the receipt of the notice were marked as Ex.P-2 to Ex.P-5. On the side of the defence, no witness and no document filed.

4. The trial Court, on considering the evidence available and taking into consideration of the three presumptions under the N.I Act, viz., under Section 118, 138 and 139 of the Act, held that, except the formal denial in the Section 313 Cr.P.C., the petitioner has not adduced any evidence to rebut the presumptions. Having proved the borrowing through Ex.P-1 (pro-note) and the cheque (Ex.P-2) issued to discharge the said debt, the trial Court in its judgment dated 23/04/2015 held the accused guilty of the offence under Section 138 of NI Act, sentenced to undergo one year S.I and to pay compensation of the cheque amount of Rs.1,00,000/- within 3 months period.

5. The Criminal Appeal No.136/2015 challenging the trial Court



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judgment of conviction and sentence filed on the ground of limitation, but same was dismissed by the Learned I Additional District and Sessions Judge, Coimbatore, *vide* order dated 29/04/2017 confirming the conviction and sentence imposed by the trial Court.

6. Alleging that, the Courts below has committed manifest error and illegality, the present revision petition is filed.

7. To buttress the submission, the dates of the events is stated as below:-

Date of presentation of the Cheque	06/10/2009
Date of dishonour and return memo	07/10/2009
Date of Statutory Notice	26/10/2009
Date of receipt of the notice by the accused	30/10/2009
Date of complaint	17/02/2010

8. The Lower Appellate Court, considering plea of limitation, had observed that, on perusal of the case records the complaint was presented in the open court on 10/12/2009. Since the statutory notice was received by the accused on 27/10/2009, the 15 days time to respond to the notice expires on



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15/11/2009 and 30 days time to file complaint expires on 14/12/2009. Since the complaint presented within the expiry of 30 days from the date of cause of action, negative the plea of the accused/appellant.

9. The Learned counsel for the Revision Petitioner prayed this Court to verify the original records to know that the Lower Appellate Court has erred in reckoning the limitation and the dates. Pointing the contradiction in paragraph No.8 of the Lower Appellate Court judgment, the Learned counsel for the Revision Petitioner contended that the Learned Judge was not certain about the date of presentation of the complaint. At line 4, he has stated that the complaint was presented in the open court on 10/12/2009, but in the same paragraph at line 8, he has stated that the complaint was presented on 20/12/2009. Whereas, the trial Court judgment indicates the Calendar Case was taken on file on 26/03/2010 by the Judicial Magistrate-2, Coimbatore and later transferred to Judicial Magistrate, FTC-1 and taken on file after renumbered as C.C.No.469/2013.

10. To verify, whether the complaint was presented in the open court on 10/12/2009 or on 20/12/2009, this Court called for the original records and



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verified. On the docket of the complaint, the endorsement of the Presiding Officer in green ink 'Check and Call on 24/12/2009', dated 10/12/2009 is found. Therefore, it is clear that the complaint was presented on 10/12/2009 well within the expiry of 30 days from the date of cause of action.

11. The Learned Counsel for the Revision Petitioner contended that, the sentence of one year S.I besides compensation of the cheque amount is excessive, and the same may be modified. Referring the Judgments of the Hon'ble Supreme Court, he pleaded that, the offence under Section 138 of the N.I Act is primarily a Civil wrong and the proceedings are primarily compensatory in nature. The petitioner being a lady, she may not be sentenced to undergo imprisonment, instead she may be ordered to pay suitable compensation.

12. Considering the said submission and the object of the Act, the sentence imposed by the trial Court and confirmed by the Lower Appellate Court is modified as below:-



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The Accused/petitioner is found guilty of offence under Section 138 of N.I Act for issuing cheque for Rs.1,00,000/- without sufficient balance in her account. She is sentenced to compensate the complainant/respondent a sum of Rs.1,75,000/- within a period of 30 days, from the date of receipt of the copy of this order, in default, she shall undergo one month Simple Imprisonment.

13. Accordingly, this *Criminal Revision Petition is partly allowed.*

Consequently connected Miscellaneous Petition is closed.

13.10.2022

Index : Yes/No.

Internet : Yes/No.

bsm

To,

1. The I Additional District Judge, Coimbatore.
2. The Judicial Magistrate Fast Track Court, No.1, Magisterial Level at Coimbatore.



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Dr.G.Jayachandran, J

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Pre-Delivery order made in
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13.10.2022