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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09/11/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.283 of 2020

M.Sasikumar : Petitioner/Respondent/
Complainant

Vs.

Gowsalyadevi : Respondent/Appellant/
Accused

Prayer:- This Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the judgment, dated 23/06/2020, made in CA No.43 of 2018 on the file of the Principal District and Sessions Judge, Theni, reversing the conviction and sentence imposed by the Judicial Magistrate (Fast Track Court), Uthamapalayam, vide judgment, dated 25/06/2018 made in STC No.9 of 2017 and set aside the same.

For Petitioner : Mr.K.M.Arunprasath

For Respondent : M/s.R.Bharathi

**ORDER**

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This revision has been filed seeking to set aside the order, dated 23/06/2020, made in CA No.43 of 2018 on the file of the Principal District and Sessions Judge, Theni, reversing the conviction and sentence imposed by the Judicial Magistrate (Fast Track Court), Uthamapalayam, vide judgment, dated 25/06/2018 made in STC No.9 of 2017.

2.The facts in brief:-

The complaint was filed stating that the accused persons, on 16/07/2016 received a sum of Rs.3,00,000/- as hand loan. On the same day itself, he issued a post-dated cheque, drawn on SBI, Uthamapalayam, for the said amount. The cheque was presented for payment in IDBI. It was returned stating that the drawer has given stop payment order. So notice was issued, on 12/09/2016 demanding payment of the amount. It was received, on 14/09/2016. But within the stipulated time, the accused failed to pay the above said amount.



3.The case was taken cognizance by the trial court in STC No.9 of 2017. On the side of the prosecution, 2 witnesses were examined and 4 documents marked. On the side of the accused, 3 witnesses were examined and 4 documents marked.

4.At the conclusion of the trial, the trial court found the accused is guilty of the offence punishable under section 138 of the Negotiable Instruments Act and accordingly, he was convicted and sentenced to undergo 6 months SI and Rs.1,00,000/- was ordered to be paid as compensation.

5.Challenging the above said conviction and sentence, the accused preferred appeal before the appellate court in CA No.43 of 2018 and that was also came to be allowed, on 23/06/2002. Aggrieved by the above said findings of the appellate court, this revision has been filed.

6.The case of the respondent before the trial court is that the accused and the de-facto complainant were not known to each other and there is no necessity for the complainant to lend money from the unknown



8. So challenging the correctness of the above said appellate court judgment, this revision has been preferred by the complainant.

9. It is a case of revision. So the scope, which is available to the court is very limited. Unless the revision petitioner is able to establish the fact that the finding rendered by the first appellate court is perverse or suffers from misreading or non-reading of the evidence, this court cannot interfere into the finding, even if this court finds that two views are possible, as taken one by the trial court, and one by appellate court.

10. Now let us bear in mind the factual circumstances. There is a clear admission on the part of the accused to the effect that her husband used to borrow money from several persons. Towards discharge of those loan amounts, she used to issue cheques. But later due to financial difficulties, her husband committed suicide and the cheques, which were issued before and after the disputed cheque, were honoured. After the death of her husband, she issued stop payment order to her banker, which is also available on record. But the disputed



11. But here, the circumstance clearly shows that after the death of her husband, she issued stop payment order, since she has issued several cheques in favour of several persons during the life time of her husband to discharge the loan amount. So this stop payment order clearly shows that the disputed cheque was not issued by her towards any liability incurred by her after the death of her husband. This is the strong circumstance, which is available against the complainant's case.

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13.It is the clear case of the complainant to the effect that only the accused approached him for financial assistance. He has stated that she approached him for loan, some two months prior to the above said date. He has also admitted that for about five or six months, he was lending money to her husband.

14.Reading of the entire evidence of PW1 does not inspire confidence in respect of the payment of money. Another circumstance, as pointed out by the appellate court is that from the evidence of DW2, the cheque book was issued, on 22/04/2014. The cheques issued before and after the above disputed cheques have been encashed in 2015 itself. So, it is unthinkable that by holding the disputed cheque, aside, subsequent cheques have been issued by the accused person to several persons. So this itself clearly makes out the case for the accused to rebut the presumption that the above said cheque was not issued, as mentioned by the complainant.

15.Simply because, the accused has not denied her signature in the disputed cheque, no automatic presumption under section 139 of the Negotiable



Instruments Act can be drawn without any foundation case.

Here, the foundation facts are clearly against the complainant's case. So the first appellate court has correctly come to the conclusion that presumption has been rebutted by brought on record the circumstantial evidence.

16. Here, the foundation case with regard to the payment of the loan amount has not been established by the complainant. So, I am of the considered view that the view that has been taken by the first appellate court is probable view, it cannot termed as perverse, unreasonable and incorrect also. This is the probable view has been taken by the first appellate court. No other view is possible. So, rightly the first appellate court discharged the accused. I find no illegality or irregularity in the order passed by the first appellate court.

17. In the result, this criminal revision fails and the same is **dismissed**.

09/11/2022

Index: Yes/No
Internet: Yes/No
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To,

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- 1.The Principal District and Sessions Judge,
Theni.
- 2.The Judicial Magistrate,
Fast Track Court,
Uthamapalayam.



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G . ILANGO VAN , J

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