IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.219 of 2020

Sheela Thomas .. Petitioner

Vs.

Molly Joseph ..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records in Crl.A.No.617 of 2018 on the file of the learned XVIII Additional Sessions Judge, Chennai and examine the same and to set aside the judgment pronounced on 16.10.2019 in Crl.A.No.617 of 2018 uploading and confirming the judgment of conviction passed on 30.10.2018 in C.C.No.58 of 2011 by the learned Metropolitan Magistrate, Fast Track Court II, Egmore at Allikulam, Chennai.

For Petitioner : Mr.R.Karthik

For Respondent : Mr.S.Prasanna

ORDER

This Criminal Revision Case is preferred by the accused who is convicted by the Trial Court for issuing a cheque for Rs.22,00,000/- without balance and failed to honour the same.

2. The Trial Court while holding the accused/revision petitioner guilty of offence under Section 138 of N.I.Act, sentenced her to undergo one year Simple Imprisonment and pay double the cheque amount i.e., Rs.44,00,000/- within a period of one month as compensation, failing which, to undergo 3 months Simple Imprisonment.

3. Being aggrieved by the judgment of conviction and sentence passed in C.C.No.58 of 2011 by the learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai. Appeal was preferred before the learned XVIII Additional Sessions Judge, Chennai in Crl.A.No.617 of 2018, which came to be dismissed on 16.10.2019, confirming the judgment of conviction and sentence passed by the Trial Court. Hence the present Criminal Revision Case.

4. The brief facts leading to this revision is that the appellant herein had money transaction with the complainant and her husband. In the course of their transaction, there was over due of Rs.22 lakhs and the Revision petitioner failed to pay the said money. Meanwhile, the husband of the complainant died. In the said circumstances, the complainant, when demanded money payable to her deceased husband, Revision Petitioner refused and threatened the complainant. Therefore, the complainant gave a complaint to the Deputy Superintendent of Police, Payyannur, Kannur, Kerala. Thereafter, the revision petitioner has given a letter acknowledging debt of Rs.22 lakhs since 30.03.2009 with an undertaking that she will pay a sum of Rs.22 lakhs with interest within 6 months period. Subsequently, the subject cheque dated 07.08.2010 for Rs.22 lakhs has been issued by the accused/revision petitioner. But when it was presented for collection, it got returned with a memo "Fund Insufficient". Thereafter, the complainant has caused statutory notice to the Revision Petitioner intimating about the dishonour of the cheque. The said notice dated 13.09.2010 was received by the accused on 17.09.2010. The accused has given a reply dated 27.09.2010 denying the liability and also stated that there is no amount due and payable to the complainant. In the reply notice, it is stated that when the husband of the complainant was alive, he as a member of the Trust "Dpaul School" from Kerala, sold a portion of land and got Rs.42 lakhs during the month of March 2009. The said money was not accounted and the unaccounted money was received by the husband of the complainant. Out of this, Rs.22 lakhs was entrusted to the accused and in turn four blank cheques were obtained. As directed by the husband of the complainant, Rs.22 lakhs was invested/spent and Rs.5 lakhs was donated to the Mananthavadi Diocese. After the demise of Joseph/the husband of the complainant, dispute regarding the right of late Joseph alienating the trust property arose and in the said context, the complainant came to the residence of the accused with Goondas and threatened to kill her and as a consequence now the subject cheque given in blank has been falsely converted and presented for collection.

5. Stating that the said reply is false a complaint under Section 138 of Negotiable Instruments Act was filed and the same has been taken on file by the learned V Metropolitan Magistrate, Egmore, Chennai.

6. Before the Trial Court, the complainant has mounted the witness box and has marked Exhibits 1 to 6. The accused has not chosen to let in evidence. However, the complainant, who has filed the proof affidavit in lieu of chief examination has been cross examined at length on 05.09.2013, 07.11.2013, 04.09.2014 and 01.11.2014. Thereafter, re examination of witnesses was done on 06.03.2017, for that, cross examination was done on 01.07.2017. Thus, the complainant who mounted in the witness box and gave his chief examination on 13.10.2011 was subjected to cross examination starting from 05.09.2013 and the examination completed only on 01.07.2017.

7. This Court bound to place on record the above detail because the extensive cross examination of PW.1 was read over during the argument by the Revision Petitioner/accused to emphasis that the accused though not let in positive evidence on her side, but her incise cross examination of PW.1 had discharged the onus and shifted the burden on the complainant to prove the subject cheque was issued for enforceable liability.

8. While the case of the complainant is that during the life time of her husband, the accused borrowed Rs.22 lakhs and to discharge the debts he gave the subject cheque marked as Ex.P2. On presentation for collection, it was returned for "Insufficient fund" as per Ex.P3. Therefore, the accused is liable to be prosecuted under Section 138 of N.I.Act.

9. The specific defence taken by the accused in the course of cross examination of PW.1 and her reply is that the money she received from the husband of the complainant is an unaccounted money, that money was invested as per the direction of the complainant's husband during his life time. The money which was entrusted by Joseph, the husband of the complainant (deceased) is the sale proceeds of the trust property and subsequently there was dispute between one of the Trustees Valasamma and the complainant regarding alienation of the trust property. The subject cheque was obtained using force involving rowdy elements. In the reply notice the accused has stated this and in the cross examination of PW.1 has projected that Ex.P1 agreement executed by the accused acknowledging the debt and promising to repay the debt of Rs.22 lakhs within 6 months was obtained by force in the office of the Deputy Superintendent of Police, Kannur. The case diary pertaining to the complaint given by the accused before the Deputy Superintendent of Police, Kannur has been obtained under RTI and marked as Ex.P6.

10. The sum and substance of arguments placed by the learned counsel for the Revision Petitioner is that (i) Complainant is not the holder of the cheque (ii) the debt not proved (iii) the money given by the complainant to the accused is an unaccounted money. Therefore, the cheque issued to repay the said money cannot be termed as a cheque issued for an enforceable debt.

11. The Courts below had rejected these points for the reason that the execution of the cheque is admitted by the accused and the money transaction of Rs.22 lakhs also admitted by way of reply is marked as Ex.P5. While so, Ex.P1-the acknowledgement letter also admits that the receipt of Rs.22 lakhs from the husband of the complainant and the cheque was given to the complainant after the demise of her husband. No doubt in the complaint as well as in the sworn statement, it is not so expressly stated how the money transaction took place. But the fact remains that the accused admits the subject cheque Ex.P2 was issued by the accused for the money received by her from Joseph, the husband of the complainant.

12. Though the learned counsel for the Revision Petitioner contended that the complainant is not the holder of the cheque, while looking at the definition of holder of the cheque as defined under the Negotiable Instrument Act, the cheque drawn in the name of the complainant falls within the definition of holder of the cheque. Further, it is not the case of the accused that the cheque was not given to the complainant. It is the case by way of suggestion to the complainant is that the cheque was obtained in the police station along with Ex.P1. Even assuming that there was some enquiry in the police station and the parties have arrived at an understanding that the money of Rs.22 lakhs will be paid within 6 months and executed Ex.P1 and pursuant to the agreement, cheque for Rs.22 lakhs was given, then that fact ought to have been part of reply notice Ex.P5. However, this Court finds the said fact conspicuously absent in the reply notice.

13. Furthermore, the accused is not an uneducated person. She is a lawyer by profession and she cannot claim that the cheque was obtained by force in the police station. If it is so, PW.1 should have atleast brought to the notice of the law enforcing agency soon after the threat ceased. So this Court finds that the defence taken by the accused that Ex.P1 and Ex.P6 were obtained by coercion and force are unbelievable.

14. Now coming to the other points raised by the learned counsel for the Revision Petitioner that a sum of Rs.22 lakhs was received by the accused only from the husband of the complainant and since the said money is unaccounted money, she is not liable to repay it does not carry any merit. Having admitted that the receipt of money whether it is accounted or unaccounted money does not matter for taking cognizance under Section 138 of N.I.Act, only the genuineness of the drawal of the cheque and whether the cheque given to discharge the liability alone matters. Admission in the examination of PW.1, that her husband has no source of income and he was not assessed under income tax or the transaction not reflected in the income tax return all falls to grounds. Since if any unaccounted money maintained or kept by the complainant, it is for the Income Tax Authority to take necessary steps. The person who has borrowed money on received the money cannot decline to repay the money on the account that the money is ill-gotten money.

15. Having admitted that she has received Rs.22 lakhs from the husband of the complainant, the accused ought to have proved that the money received from Late Joseph been repaid or returned as per the instructions of Joseph. There is no evidence to substantiate the plea of discharge. When there is no evidence to presume that the money admittedly received been repaid, the presumption under the N.I.Act squarely falls in favour of the complainant who has come out with the specific case that the accused owed Rs.22 lakhs to her husband and after the demise of her husband, the money demanded and for which the accused gave the subject cheque Ex.P1. The said fact are substantially admitted by the accused in her acknowledgement in the letter marked as Ex.P1 and reply notice marked as Ex.P5. Therefore, this Court finds no error in the findings of the Courts below both facts and law. Hence there is no requirement to interfere with the finding of the Courts below while exercising power of this Court under Section 397 r/w. 401 Cr.P.C. Accordingly, this Criminal Revision Case is dismissed.

16. The learned counsel for the Revision Petitioner submitted that at the time of admission of the revision petition the revision petitioner sought for suspension of sentence. As a precondition for suspension of sentence, this Court directed the Revision Petitioner to deposit a sum of Rs.5 lakhs in the C.C.No.88 of 2011 account. A1 also gave an undertaking that if sufficient time is granted she will settle the disputed amount and compound the offence, but due to her inability to mobilise the funds, she was not able to comply with the condition. Already Non Bailable Warrant issued and in these circumstances, she prayed that the compensation amount may be reduced.

17. Taking note of the financial incapacity of the revision petitioner, this Court having given due consideration to the request to modify the sentence and compensation, pass the following order:-

The accused/revision petitioner herein found guilty of offence under Section 138 of N.I.Act she is sentenced to undergo one year Simple Imprisonment and pay a compensation of Rs.22 lakhs being the cheque amount instead of twice the cheque amount as ordered by the Trial Court and confirmed by the lower Appellate Court. The compensation amount of Rs.22 lakhs shall be paid within a period of one month, failing which, she shall undergo further period of 3 months Simple Imprisonment.

18. With the above modification, this ***Criminal Revision Case is partly allowed***.

12.04.2023

Internet : Yes/No
Index: Yes/No

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To

1.The XVIII Additional Sessions Judge, Chennai.

2.The Metropolitan Magistrate, Fast Track Court II, Egmore, Allikulam, Chennai.

Dr.G.JAYACHANDRAN, J.

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