



Crl.R.C.No.923 of 2023
and Crl.M.P.No.7543 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.923 of 2023

and

Crl.M.P.No.7543 of 2023

D.Muthulakshmi

... Petitioner

Vs.

P.Jagadambal

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to call for the records relating to the judgment passed by the learned Principal Sessions Judge, Tiruppur in Crl.A.No.27/2019 dated 17.03.2021 dismissing the appeal and confirming the judgment dated 30.01.2019 in C.C.No.136/2010 passed by the learned Judicial Magistrate No.I, Tiruppur.

For Petitioner : Ms.S.Vasanthi

For Respondent : Mr.D.R.Arunkumar



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ORDER

Challenge in this revision is made to the judgement and orders passed by the learned Principal Sessions Judge, Tiruppur in C.A.No.27/2019 confirming the conviction and sentence passed by the learned Judicial Magistrate No.1, Udumalpet in C.C.No.136/2010.

2.The case of the complainant in a nutshell is as follows :

The revision petitioner/accused borrowed a sum of Rs.3,50,000/- from the complainant on 05.11.2009 for her urgent family needs. She assured that she would repay the same within a month. In order to discharge the liability, the present revision petitioner/accused issued a cheque bearing No.693482 dated 09.12.2009 (Ex.P1) drawn on City Union Bank, Udumalpet Branch for a sum of Rs.3,50,000/- to the respondent/complainant. When the complainant presented the said cheque for collection through his banker, viz., the Indian Bank, Udumalpet Branch, the cheque was returned on 12.12.2009 (Ex.P2) with an endorsement "Funds Insufficient". Therefore, the



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respondent/complainant issued a legal notice dated 27.01.2010 (Ex.P4) directing the revision petitioner to make good the payment within a period of 15 days. Though the revision petitioner/accused received the said legal notice on 28.01.2010 as is seen from the postal acknowledgement card (Ex.P5), she did not come forward to pay the amount due under the cheque and did not also send any reply to the notice received by her.

3. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.I, Udumalpet under Section 200 Cr.P.C. against the present revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.136/2010. The learned Judicial Magistrate No.1, Udumalpet took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused/revision petitioner and on her appearance, furnished copies of records under Section 207 Cr.P.C. When the revision petitioner/accused was questioned with regard to the substance of accusation made against her, she pleaded



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not guilty and the case was therefore posted for trial.

4.The complainant examined himself and marked Ex.P1 to Ex.P5. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, the accused denied of having committed any offence. She examined herself as DW1 and one another witness. However, no documentary evidence was adduced on her side. During the pendency of C.C.No.136/2010, the complainant died and therefore, his wife was impleaded as a legal heir of the complainant.

5.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced her as detailed hereunder.

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for six months and to pay a sum of Rs.3,00,000/- as



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<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
		compensation to the complainant u/s.357 Cr.P.C., in default, to undergo simple imprisonment for three months.

6. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A.No.27/2019 before the Principal Sessions Court, Tiruppur. The learned Principal Sessions Judge, Tiruppur after analysing the oral / documentary evidences adduced on both sides confirmed the judgement passed by the Trial Court Judge, as against which the present criminal revision is filed.

7. It is seen from the records that the original complainant examined himself on 23.03.2011 and died after three years i.e. on 04.04.2014. The trial court judge in his judgment dated 30.01.2019 had observed that though the complainant was present in the court for 16 hearings, the accused did not utilise the opportunity to cross examine the complainant. The accused had deposed that the impugned cheque was issued to the complainant only as a security for the chit transaction



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conducted by him and that the same has been misused by him. However, no acceptable evidence was adduced to substantiate the same. The evidence of Geetha (DW2) is that the impugned cheque was issued only as a security for the chit transaction between the complainant and the accused and that the complainant is demanding higher rate of interest. The trial court judge had disbelieved the version of DW2 on the ground that the DW2 had deposed on the same lines in favour of the present revision petitioner/accused in another case filed under Section 138 of the Negotiable Instruments Act.

8.Ms.S.Vasanthi, learned counsel for the revision petitioner contended that the cheque was subsequently filled up and that the accused had handed over only a signed blank cheque to the complainant. Even assuming that this contention is true, Section 20 of the Negotiable Instruments Act will come into operation which reads thus :

“20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments



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then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

9.Both the courts below had concurrently held that there is an existing legally enforceable debt and that the accused did not rebut the presumption under Section 139 of the Negotiable Instruments Act. In fact, both the Courts below had analysed the entire evidence on record and I therefore do not see any reason to interfere with the same.



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10.In the result, this Criminal Revision Case is dismissed. No costs. Consequently, connected Criminal Miscellaneous Petition is closed.

- i. The judgment dated 17.03.2021 passed in C.A.No.27/2019 on the file of the Principal Sessions Court, Tiruppur and the orders dated 30.01.2019 passed in C.C.No.136/2010 on the file of the Judicial Magistrate Court No.1, Udumalpet, are confirmed.
- ii. The revision petitioner/accused shall surrender before the Judicial Magistrate No.1, Udumalpet, within 15 days from the date of receipt of copy of this order, failing which, the Trial Court shall take steps to secure her for undergoing the sentence.

01.09.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The Principal Sessions Court, Tiruppur.
- 2.The Judicial Magistrate Court No.1, Udumalpet.

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