



Crl.R.C.No.410 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

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B.Rajhini

... Petitioner

Vs.

R.Kumar

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the conviction and sentence imposed by the learned Judicial Magistrate, Fast Tract Court, Magisterial level, Ambattur in S.T.C.No.92 of 2016 dated 22.08.2017 convicting the accused and sentenced to undergo four simple imprisonment and to pay a compensation of Rs.30,00,000/- to the complainant within one month and in default to undergo simple imprisonment for one month for offence under Section 138 of NI Act and confirmed by the learned Principal District and Sessions Judge at Tiruvallur in C.A.No.134 of 2017 dated 06.11.2019.

For Petitioner : Mr.M.Prabhakar
For Respondent : Mr.SN.Thangaraj
For Mr.R.Sreerangan



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ORDER

The revision petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act (herein after called as “the NI Act”). This Criminal Revision is filed by the accused who was found guilty by the trial Court and same confirmed by the lower appellate Court.

2. The brief fact of the case is that the complainant R.Kumar and the accused Rajhini are related to each other. The husband of the accused and the complainant were involved in real estate business and they had money transaction between them. In the course of the said transaction, it is alleged in the complaint that the complainant had transferred a sum of Rs.15,78,000/- through NEFT to the account of the accused and further sum of Rs.14,72,000/- was given as loan by the wife of the complainant to the accused. Totally a sum of Rs.30,50,000/- was due and payable by the accused. While so, to discharge the debt the subject cheque dated 15.06.2015 for Rs.30,00,000/- drawn at Karnataka Bank Ltd., Anna Nagar branch, was issued to the complainant by the



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accused. The cheque returned for want of funds. Hence the complaint, after causing statutory notice.

3. The accused on receipt of the statutory notice had replied through her lawyer, wherein the relationship and the money transactions admitted. Specifically in the reply, the accused has stated that she and her husband had jointly obtained loan of Rs.24,00,000/- on various occasions from the complainant and his wife. The said transaction commenced in the year 2013 and they were periodically repaying the interest at the rate of 36%. However, misusing the blank cheque given earlier, the amount has been filled as Rs.30,00,000/- and presented for collection.

4. Before the trial Court, the complainant has marked the entries in the statement of account to prove that total sum of Rs.15,78,000/- been transferred through NEFT to the account of the accused on various dates commencing from 17.09.2013 to 13.06.2015 as per Ex.P.1 to Ex.P.5. Further a sum of Rs.14,72,000/- received from his wife, who withdrawn a sum of Rs.2,72,500/- from her account



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maintained in State Bank of India, Anna Nagar Branch and also further sum of Rs.3,84,000/- and Rs.4,15,000/- paid to the accused by his wife viz., Sujatha by pledging her jewels in Kilpauk Benefit Saswatha Nidhi Ltd., Mogappair. Thus, he claimed that totally a sum of Rs.30,00,000/- given as loan to the accused. To discharge the said debt, said cheque was issued. He has also marked the entries pertaining to the bank account and jewel loan account of his wife as Ex.P.6 to Ex.P.8.

5. In defence, the accused has cross-examined the complainant suggesting that there is no proof for payment of Rs.6,72,500/- alleged to have been withdrawn from the account of the complainant's wife maintained at State Bank of India, Anna Nagar, and for the payment of Rs.3,84,000 and Rs.4,15,500/-. Further suggested that several amount had been paid to the account of the complainant by the accused and her husband between 23.09.2014 to 16.12.2015 to a tune of Rs.6,31,000/- and the same has been suppressed by the complainant.



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6. The trial Court on considering the evidence and the entries found in the statement of account which are marked as Ex.P.1 to Ex.P.8, accepted the case of the complainant that his wife had withdrawn money from her bank account and also raised jewel loan, to advance loan to the accused as claimed in the complaint. Hence convicted the accused and sentenced her to undergo four months simple imprisonment and also pay the cheque amount of Rs.30,00,000/- as compensation within a month failing which to undergo one month simple imprisonment.

7. Aggrieved by the judgment of the trial Court, the accused preferred an appeal in Crl.A.No134 of 2017 before the learned Principal Session Judge, Tiruvallur. The lower appellate Court on appreciating the evidence held that the contentions of the appellant untenable. Having admitted the borrowing of Rs.24,00,000/- at 36% interest. In the absence of evidence towards repayment of the loan amount, the execution of the cheque is to be presumed for discharge of the liability. The lower appellate Court dismissed the appeal and confirmed the judgment of the trial Court.



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8. The learned counsel appearing for the revision petitioner preferred this Criminal Revision being aggrieved by the judgment of the lower appellate Court, contented that the Courts below failed to consider that there is no existing liability to invoke Section 138 of the NI Act. Around Rs.6,31,000 paid through bank transactions and admission of the same by the complainant in his cross-examination, has not been taken note by the Courts below. Further cheque payment of Rs.79,900/-, Rs.4,85,000/- and Rs.5,00,000/- which form part of the entires in the statement of account were also not considered.

9. Further the learned counsel appearing for the petitioner submitted that in the absence of proof of alleged payment of Rs.14,72,000/-, mere source, which is proved by the complainant by marking Ex.P.6 to Ex.P8, is not a proof for the payment of the said amount to the accused.



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10. Per contra, the learned counsel appearing for the complainant/ respondent would submit that the complainant has proved the borrowal through Ex.P.1 to Ex.P8 and the accused also in her reply notice admitted the borrowing of Rs.24,00,000/- from the complainant and his wife. Having admitted the borrowal and issuance of cheque to discharge the debt, the payment made towards the interest and reversed debt in the statement of account cannot be taken advantage by the accused to mislead the Court that the amount has been totally discharged.

11. He further submitted that the Courts below after considering all those facts had found that the accused has borrowed Rs.30,00,000/- and the same has been proved by the complainant by Ex.P.1 to Ex.P.8. There is no evidence to show that the amount being repaid with interest. Having admitted that a sum of Rs.24,00,000/- borrowed and in the absence of evidence regarding repayment of the amount, the Courts below had rightly held the accused is guilty and there is no perversity in the order to interfere in the revision petition.



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12. The point for consideration is whether the cheque marked as Ex.P.9 for a sum of Rs.30,00,000/- dated 15.06.2015 was issued by the accused to discharge the existing liability.

13. Before the Court 14 exhibits and testimony of two witnesses viz., the complainant i.e., P.W.1 and his wife Sujatha i.e., P.W.2 are available for consideration. The subject cheque is marked as Ex.P.9, which was drawn in favour of the complainant R.Kumar, for a sum of Rs.30,00,000/-. The signature and issuance of cheque were not denied by the accused. To prove that the cheque was issued to discharge enforceable liability, Ex.P.1 to Ex.P.8 were marked.

14. While Ex.P.1 to Ex.P.5 are the entries from the joint account of the complainant and his wife maintained in Karur Vysya Bank, Mogapair, to prove that sum of Rs.15,78,000/- paid through NEFT to the accused. Ex.P.6 to Ex.P.8 are the documents would show that the wife of the complainant viz., P.W.2 in this case had withdrawn a sum of



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Rs.2,72,500/- & Rs.4,00,000/- from her account maintaining in State Bank of India, Anna Nagar, and further pledging her jewels at Kilpauk Benefit Saswatha Nidhi Ltd., Mogappair, to raise loan of Rs.3,84,000/- and Rs.4,15,500/-.

15. Ex.P.14 is the pronote alleged to have executed by the accused in favour of P.W.1 promising to pay a sum of Rs.30,00,000/- with 24% interest on demand. This pronote is dated 12.06.2015. The marking of Ex.P.14 has been objected by the learned counsel appearing for the accused, since this has been introduced for the first time through P.W.2 during her examination and there is no whisper about the execution of this pronote either in the statutory notice or in the proof affidavit of P.W.1.

16. This Court is also not intended to take note of this pronote, which is marked as Ex.P.14, since it is a fact introduced mid of trial and not whispered by the complainant in his complaint or in his testimony while examining as P.W.1. Very execution of pronote on 12.06.2015 for



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Rs.30,00,000/- and the issuance of cheque within three days to discharge the debt creates suspicious, if Ex.P.9 the subject cheque and Ex.P.14 pronote are read juxtaposition.

17. Dehors of this infirmity in the complainant case, this Court is not inclined to interfere with the concurrent findings of the Courts below for the reason that the accused herself has admitted in her reply notice that she and her husband borrowed a sum of Rs.24,00,000/- for the interest at the rate of 36%. The entires relied upon by the accused indicating the payment of interest will not exonerate her from the liability of the issuance of cheque for a sum of Rs.30,00,000/- to discharge the principal.

18. Though it is contended by the learned counsel appearing for the accused that the amount found in the cheque is not the actual debt, this plea finds no support since in the reply notice which is marked as Ex.P.13, borrowing of Rs.24,00,000/- in the year 2013 with promise to repay the same with 36% interest is admitted. The subject cheque Ex.P.9



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dated 15.06.2015 for a sum of Rs.30,00,000/- would sustain the test of enforceable debt, even if Ex.P.6 to Ex.P.8 relied by the complainant is not sufficient to prove the payment of money to the accused.

19. Her Own admission that a sum of Rs.24,00,000/- borrowed by her in the year 2013, with a promise to repay the same with 36% interest and issuance of cheque after two years clearly shows that there is a liability existing and the cheque was issued to discharge the existing liability.

20. The entries of payment in respect of Rs.6,31,000/- has explained by the complainant in his cross-examination that it is only towards interest borrowed and not for principal. In the reply notice also the accused admits that she has paid only interest and not whispered about the repayment of the principal amount. Hence, This Court is not inclined to interfere with the concurrent findings of the Courts below since there is no perversity in the appreciation of the facts and evidence by the Courts below.



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21. Accordingly, the Criminal Revision stands dismissed.

20.04.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Principal District and Sessions Judge,
Tiruvallur
2. The Judicial Magistrate,
Fast Tract Court,
Magisterial level,
Ambattur.



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Dr.G.JAYACHANDRAN, J

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