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Crl.R.C.No.1383 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1383 of 2016

Asiya Begum

W/o.A.Sadhiq Batcha

... Petitioner/Appellant/Accused

Vs.

Pon.Sukumaran

S/o.Ponnusamy

... Respondent/Respondent/
Complainant

Prayer : Criminal Revision filed u/s.397 and 401 of the Code of Criminal Procedure against the judgment dated 29.02.2016 made in C.A.No.120 of 2015 on the file of II Additional Sessions Court, Erode, confirming the judgment dated 17.06.2015 made in S.T.C.No.296 of 2012 on the file of Judicial Magistrate, Fast Track Court II, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Ezhilarasan



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ORDER

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This criminal revision case has been filed against the judgment and order passed by the II Additional Sessions Court, Erode, in C.A.No.120 of 2015, dated 29.02.2016, dismissing the appeal and confirming the judgment and order passed by the Judicial Magistrate, Fast Track Court II, Erode, in S.T.C.No.296 of 2012, dated 17.06.2015, convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to undergo one year simple imprisonment and to pay fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.

2. The respondent filed a private complaint against the petitioner on the ground that the petitioner had taken loan of Rs.20,00,000/- and to discharge this liability, the petitioner issued the subject cheque [Ex.P1]. When this cheque was presented for collection by the respondent, it was returned with an endorsement 'funds insufficient'. The same was informed to the respondent through a return memo, which was marked as Ex.P2. Immediately, a statutory notice [Ex.P3] was issued by the respondent and the petitioner was called upon to pay the cheque amount within a period of



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fifteen days. In spite of having knowledge about the issuance of the statutory notice, the petitioner neither gave any reply nor paid the cheque amount, as a result, the private complaint was filed against the petitioner for offence u/s.138 of the Negotiable Instruments Act.

3. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the legal presumption u/s.139 of the Negotiable Instruments Act must lean in favour of the respondent and that the petitioner failed to rebut the presumption and accordingly, convicted and sentenced the petitioner u/s.138 of the Negotiable Instruments Act. This was further confirmed by the appellate Court in C.A.No.120 of 2015. Aggrieved by the same, the present criminal revision case has been filed before this Court.

4. Heard Mr.N.Manokaran, learned counsel for petitioner and Mr.R.Ezhilarasan, learned counsel for respondent.

5. The main ground that was taken by learned counsel for petitioner is



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that there was absolutely no proof to establish that loan was given by the respondent to the petitioner. The entire liability arose out of a chit transaction and the same was concealed by the respondent and it was shown as if the respondent had given a loan to the petitioner and this vital factor has not been considered by both Courts below. It was further submitted that the cheque, which was given as security for the chit transaction, has been filled up by the respondent and it has been misused. In view of the same, it is submitted that the Court below ought not to have presumed that there was a legally enforceable debt/liability on the part of the petitioner.

6. In the considered view of this Court, the Courts below after considering the defence taken by the petitioner, found that the petitioner did not deny the signature in the subject cheque. It was also seen that the petitioner owed the amount to the respondent, even if it is taken to be a chit transaction. In view of the same, the trial Court had applied the legal presumption u/s.139 of the Negotiable Instruments Act and accordingly, convicted and sentenced the petitioner for offence u/s.138 of the Negotiable



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Instruments Act.

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7. This Court does not find any perversity in the findings of the Courts below and such findings have been rendered on proper appreciation of the facts and evidence that were let in before the Court. In view of the same, this Court is not inclined to interfere with the judgment and order passed by the trial Court and as confirmed by the appellate Court.

8. In the light of the above discussion, this Court issues the following directions:

(a) the petitioner is directed to deposit a sum of Rs.20,00,000/- [Rupees Twenty Lakhs only] before the trial Court on or before 12.05.2023. If the petitioner has deposited any amount before the trial Court, the same shall be given credit and the balance amount shall be deposited within the time stipulated by this Court.

(b) if the petitioner complies with the direction in clause (a), the offence



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u/s.138 of the Negotiable Instruments Act shall stand compounded and the conviction and sentence passed by the trial Court and confirmed by the appellate court shall stand set aside.

- (c) if the petitioner deposits the amount as directed in clause (a), it is left open to the respondent to file a memo before the trial Court seeking for withdrawal of the amount and the trial Court shall entertain the memo and permit the respondent to withdraw the amount;
- (d) if the petitioner fails to comply with the direction in clause (a), the petitioner shall surrender before the trial Court on 15.05.2023 and the trial Court shall make the petitioner undergo the sentence imposed by the trial Court; and
- (e) if the petitioner fails to surrender as directed in clause (d), the trial Court shall take immediate steps to secure the petitioner and make him undergo the sentence imposed by the trial Court.

8. In the result, this Criminal Revision Case is disposed of in the



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above terms.

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Post this case under the caption 'FOR REPORTING COMPLIANCE'

on 05.06.2023.

16.03.2023

Index : Yes/No

Speaking Order / Non Speaking Order

Neutral Citation: Yes/No

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To

1.The II Additional Sessions Court,
Erode.

2.The Judicial Magistrate,
Fast Track Court II, Erode.

N. ANAND VENKATESH, J



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