



Crl.R.C.No.713 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.713 of 2020

Kavitha @ Nandhini,

... Petitioner/Appellant/Accused

/versus/

Navaneethakrishnan,

... Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397(1) and 401 of Cr.P.C., pleaded to call for the records and set aside the judgment dated 05.12.2017 made in C.A.No.34 of 2017 on the Learned V Additional District and Sessions Judge, Coimbatore which was confirming the judgment of the trial Court dated 20.01.2015 in C.C.No.337 of 2015 on the file of Learned Judicial Magistrate, Fast Track Court No.2 @ Magisterial Level, Coimbatore and acquit the petitioner by allowing this revision.

For Petitioner : Mr.M.Akash,
for M/s.G.K.Associates

For Respondent : Mr.M.Silambarasan,
for Mr.R.Ganesh Babu

ORDER



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This Criminal Revision Case is filed against the concurrent finding of the Courts below holding the revision petitioner guilty for issuance a said cheque for sum of Rs.4,80,000/-, without making sufficient arrangement with the bank to honour the same.

2. The gist of the complaint is that, the accused and her husband (D.W.1) were dealing with the complainant and doing gold business. On 04.01.2013, the accused and her husband entered into an agreement with the complainant and received 150 grams (99.90) pure gold with an undertaking that, within two years period, gold weighing 150 grams (99.90) pure gold will be returned or *in lieu of* the gold, a sum of Rs.4,80,000/- will be paid. Even after lapse of two years, the accused and her husband did not pay the agreed amount. After much persuasion, the accused gave a cheque for Rs.4,80,000/- drawn on Indian Bank, Raja Street Branch, Coimbatore, dated 23.06.2015. When the cheque was presented for collection, returned with endorsement “insufficient fund”. After causing statutory notice, calling upon the accused to repay the cheque amount and the accused failed to reply or repay the cheque amount. The complaint, in writing present before the Judicial Magistrate Court, Fast Track Court No.2 @ Magisterial Level,



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3. To prove the complaint, the complainant mounted the witness box examined himself as P.W.1 marked the agreement dated 04.01.2013, the cheque issued in his favour for Rs.4,80,000/- drawn by the accused, the cheque return memo, legal notice with postal receipt and acknowledgement card marked Ex.P.1 to Ex.P.5 respectively. In defence, the husband of the accused Malan (D.W.1) had mounted the witness box, denying the liability and to project the defence that the cheque was given as collateral security while he and his wife (accused) borrowed Rs.50,000/- from the complainant. The said money was repaid during the 2nd week of June 2015, in spite of that without returning the agreement as well as the cheque given as collateral security, the present complaint is filed.

4. The trial Court, after appreciating the evidence found that there is an admitted written agreement between the complainant and the accused indicating gold of 150 grams (99.90) pure has been received by the accused and her husband with promise that, within two years same will be returned or its value of Rs.4,80,000/- will be repaid. To discharge the said debt, the cheque for



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Rs.4,80,000/- drawn by the accused and issued but same was returned without realisation. Having issued a cheque for discharging the enforceable liability and not arranged for payment, offence under Section 138 of N.I gets attracted. The accused was attempted to discharge the burden had not placed material evidence to that effect and therefore, the accused is liable to be punished for the offence under Section 138 of N.I.

5. The trial Court has sentenced the accused to undergo one year S.I and to pay the cheque amount of Rs.4,80,000/- as compensation with interest of 6% per annum from the date of cheque till date of payment within period of one month, in default 6 months S.I.

6. On appeal, the V Additional District and Sessions Judge, after re-appreciating the evidence found that the trial Court judgment holds good since the legally enforceable debt proved through the agreement marked as Ex.P.1. The failure on the part of the accused even to the reply to the statutory notice duly served on her and the probable defence projected through D.W.1 is not sufficient to probabilise the case of the accused.



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7. The Revision Petition before this Court is on the ground that the trial Court failed to properly appreciate the evidence of D.W.1 (Malan) and there is no proof to show that the accused and the complainant had any business contract. Both the grounds raised in the revision petitioner *per se* unsustainable, in the light of the fact that, the accused along with her husband entered into a writing agreement with the complainant to the effect that, they have borrowed 150 grams of gold (99.90) purity and the market value of Rs.4,80,000/- as on 04.01.2013. Having executed a document to the effect that, they owe the complainant that 150 grams (99.90) pure gold or *in lieu of* it, a sum of Rs.4,80,000/-. To discharge the said debt, the accused has given the cheque marked as Ex.P.2. Having admitted the execution of the agreement as well as the cheque, the proof of liability is positively established by the complainant and therefore, there is no perversity in the finding of the Courts below.

8. Hence, this Criminal Revision Case is dismissed.

14.06.2023

Index :Yes/No.
Internet :Yes/No.



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Neutral Citation :Yes/No.

Speaking order/Non-speaking order

bsm

To,

1. The V Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate, Fast Track Court No.2 @ Magisterial Level, Coimbatore.



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Dr.G.JAYACHANDRAN,J.
bsm

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