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Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

M.Kanaka

... Petitioner

Vs.

D.Venkatesan

... Respondent

Prayer : Criminal Revision filed under Section 397 & 401 of Criminal Procedure Code to set aside the conviction imposed in the judgment dated 25.04.2023 made in Crl.A.No.198 of 2022 on the file of the learned IV Additional District Sessions Court Erode District at Bhavani confirming the conviction imposed in judgment dated 26.09.2022 made in S.T.C.No.1405 of 2018 on the file of the learned Judicial Magistrate No.1, Bhavani.

For Petitioner : Mr.N.Senthilkumar

ORDER

This Criminal Revision Petition is directed against the judgement passed by the IV Additional District and Sessions Court, Erode District at Bhavani in Crl.A.No.198 of 2022 whereby the accused



Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

WEB COPY

was convicted for an offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and pay compensation of Rs.5,00,000/- within a period of three months, in default, to undergo simple imprisonment for three months.

2.The case of the complainant is that the accused who is his friend and is running a Tea & Coffee bar borrowed a sum of Rs.2,50,000/-, to meet her urgent family and business expenses, from the complainant and assured that she would repay the same within two months. In order to discharge the debt, the present revision petitioner/accused issued a cheque bearing No.000115 dated 14.09.2018 (Ex.P1) drawn on Karur Vysya Bank, Bhavani Branch. When the complainant presented the said cheque for collection through his banker, namely, Tamil Nadu Mercantile Bank, Bhavani Branch, the same was returned on 15.09.2018 with an endorsement "Funds Insufficient". Though the respondent/complainant approached the revision petitioner on several occasions in person and also over phone, the revision



Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

WEB COPY

petitioner / accused did not make good the payment. Therefore, the respondent / complainant issued a statutory notice dated 22.09.2018 (Ex.P4) to the revision petitioner and the same was received by her on 25.09.2018 as is seen from the registered postal acknowledgement card (Ex.P5) and thereafter, the revision petitioner / accused issued a reply (Ex.P7) which according to the complainant contained false allegations. In the reply notice (Ex.P7), the revision petitioner / accused had requested the complainant to send the original cheque for perusal and when the photostat copy of the same was sent by the complainant, she sent another reply notice dated 04.10.2018 (Ex.P10) stating that she does not know the complainant.

3. Thereafter, the complainant filed the private complaint under Section 200 Cr.P.C before the Judicial Magistrate No.1, Bhavani in S.T.C.No.1405/2018. Notice was issued to the revision petitioner / accused for her appearance. Copies of the records were furnished to her under under Section 207 Cr.P.C. and when the accused was questioned with regard to the substance of the allegation levelled against her, she



Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

WEB COPY

denied the same and the case was posted for trial. The complainant examined himself as PW.1 and two other witnesses and marked Ex.P1 to Ex.P10. The accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against her. The accused denied having committed the offence. However, no oral / documentary was adduced on her side.

4.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 and convicted and sentenced the revision petitioner as stated above. Aggrieved over the same, the revision petitioner/accused filed an appeal in Crl.A.No.198/2022 before IV Additional District and Sessions Court, Erode District. The learned First Appellate Court after analysing the oral / documentary evidence adduced on both sides had confirmed the judgement passed by the trial judge.

5.Heard Mr.N.Senthilkumar, learned counsel for the revision petitioner.



Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

WEB COPY

6.It is seen from the records that the revision petitioner/accused did not deny the signature on the cheque (Ex.P1). Therefore, the presumption under Sections 118 & 139 of the Negotiable Instruments Act that the cheque was issued for consideration holds good. In the instant case, the revision petitioner/accused did not adduce any acceptable evidence to show that she did not receive any amount from the complainant. The plea taken by the accused during the trial is that there was a chit transaction between her and the complainant and that the present cheque was issued as a security for the same. However, it is seen from the reply notice dated 25.09.2018 (Ex.P7) that this plea was not at all taken by the accused. On the other hand, she had insisted the complainant to send the original cheque for perusal and when the xerox copy of the cheque was sent to the accused, she sent a reply notice dated 04.10.2018 (Ex.P10) in which it is stated that she does not know the complainant. Moreover, during the course of the trial, she had stated that there was a chit transaction between her and the complainant and that the cheque in question was issued to the complainant as a security. Thus,



Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

WEB COPY

the accused had taken different stands and this aspect was taken into account by both the Courts below. The complainant had also pressed into service the original cheque (Ex.P1) and the evidence of PW1 to PW3 are cogent and the presumption under Sections 118 & 139 of the Negotiable Instruments Act was not at all rebutted by the revision petitioner / accused by way of adducing any acceptable evidence. Hence, I do not see any reason to interfere. The judgements passed by the Courts below do not warrant any interference by this Court.

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

- i. The judgment dated 25.04.2023 passed in Crl.A.No.198 of 2022 on the file of the learned IV Additional District Sessions Court Erode District at Bhavani and the judgment dated 26.09.2022 passed in S.T.C.No.1405 of 2018 on the file of the learned Judicial Magistrate No.1, Bhavani, are confirmed.



WEB COPY



Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

- ii. The revision petitioner/accused shall surrender before the Judicial Magistrate No.1, Bhavani, 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.

07.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

R. HEMALATHA, J.
mtl

To

- 1.The IV Additional District and Sessions Court, Erode District at Bhavani
2. The Judicial Magistrate No.1, Bhavani.
- 3.The Section Officer,
Criminal Section, High Court, Madras.

Crl.R.C.No.1204 of 2023
and Crl.M.P.No.9473 of 2023

07.07.2023