



Crl.R.C.No.357 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2023

DELIVERED ON : 16.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.R.C.No.357 of 2022

R.Uma Maheswari

... Petitioner

Vs.

V.K. Gunasekaran

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 against the judgment dated 19.09.2018 passed by the learned VI Additional Judge, City Civil Court, Chennai, in Crl.A. No.274 of 2016, confirming the judgment dated 17.10.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore at Allikulam, in C.C. No.5205 of 2012.

For Petitioner : Mr.M. Aravind Subramaniam
Senior Counsel
assisted by Mr.N. Majikandan
For Respondent : Mr.P. Dhananjayan



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ORDER

WEB COPY This Criminal Revision is filed against the judgment dated 19.09.2018 passed by the learned VI Additional Judge, City Civil Court, Chennai, in Crl.A. No.274 of 2016, confirming the judgment dated 17.10.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore at Allikulam, in C.C. No.5205 of 2012.

2. The complainant/respondent V.K. Gunasekaran, entered into a Memorandum of Understanding (herein after referred to as MOU) with one Uma Maheswari, the accused/appellant, who was a teacher by profession. She along with her husband Rajasekaran, wanted to develop 2.99 acres of land belonging to one Saravana Mudaliar and sell as plots. The land was situate in Valluvapakkam village of Muthialpettai Taluk of Kancheepuram District.

2.1. The couple had enticed and convinced the complainant to join them in the plot development of the said land. The complainant had given Rs.30 lakhs in two installments to the accused. The MOU is Ex.P1 and is



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dated 10.08.2007. The MOU was about returning the amount of Rs.30 lakhs given by the complainant as well as sharing of profit @ 30%. Both did not materialize. This prompted the complainant to give a police complaint in Anna Salai Police Station, Chennai.

2.2. A Civil Suit in O.S. No.236/2012 was also filed by the complainant before the Additional District Munsif Court, Kancheepuram. The complainant had also approached the concerned Sub Registrar and the Inspector General of Registration, Mylapore, Chennai, with a letter on 11.08.2012 and the accused had agreed to repay the amount by issuing a cheque No.030783 dated 18.08.2012 (Ex.P2) for Rs.30 lakhs drawn on UTI Bank (now Axis Bank). The accused had also promised to settle the profit share to be given to the complainant. However, the cheque for Rs.30 lakhs was dishonoured when presented for clearing through the banker (Indian Bank, Peters Road) of the complainant. It was returned with the reason as "Account closed" (return memo Ex.P3). A legal notice (Ex.P4) was issued by the complainant on 25.08.2012 for which the accused had replied on 06.09.2012 (reply notice Ex.P6). Since the payment was not forthcoming, a



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private complaint was filed by the complainant before the Metropolitan Magistrate Fast Track Court, Egmore, Chennai.

2.3. The learned Metropolitan Magistrate Fast Track Court, Egmore, Chennai. after receipt of the complaint recorded the sworn statement of the complainant and on perusal of the documents found that there was a prima facie case against the accused and took cognizance of offence under Section 138 of the Negotiable Instruments Act (herein after referred to as NI Act) and issued summons to the accused. On appearance of the accused, the copies of the case records were furnished to him under Section 207 Cr.P.C. When the accused was questioned, he pleaded not guilty and therefore, the case was posted for trial.

2.4. In the trial court, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P6 on his side. The complainant relied on the MOU dated 10.08.2007 (Ex.P1), dishonoured cheque bearing No.030783 dated 18.08.2012 (Ex.P2), Return Memo dated 21.08.2012 mentioning the reason for return of cheque as "Account closed" (Ex.P3), legal notice dated



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25.08.2012 (Ex.P4), postal acknowledgment card (Ex.P5) and reply notice dated 06.09.2012 (Ex.P6). When the accused was questioned with regard to the circumstances appearing in evidence against her under Section 313 Cr.P.C, she denied of having committed any offence. She examined herself and marked Ex.D1 to Ex.D11. According to the trial court, even though the accused examined herself as D.W.1 and also adduced 11 exhibits, she could not rebut the presumption against her under Section 139 of N.I. Act and therefore convicted the appellant/accused under Section 138 NI Act and sentenced her to undergo simple imprisonment for 8 months and to pay a compensation of Rs.30,00,000/- to the complainant under Section 357(3) Cr.P.C.

2.5. The accused filed an appeal against the conviction and sentence. The Appellate Court (VI Additional Judge, City Civil Court, Chennai) confirmed the verdict of the trial court. While dismissing the appeal, the Appellate Court held that the accused failed to rebut the presumption envisaged in Section 139 of NI Act. It also opined that the accused did not deny the issuance of the cheque which was dishonoured. Therefore the



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appeal was dismissed.

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2.6. This Criminal Revision is against the dismissal of the appeal.

3. Heard, Mr.M. Aravind Subramaniam, learned Senior Counsel assisted by Mr.N. Manikandan, learned counsel for the revision petitioner and Mr.P.Dhananjayan, learned counsel for the respondent.

4. Mr. M. Aravind Subramaniam, learned Senior Counsel for the revision petitioner / accused would contend that there was no business relationship between the complainant and the revision petitioner as the revision petitioner was a teacher by profession. His further contention is that three cheques (two filled and one blank) along with signed blank stamp papers were given to the complainant only as a security for the amount of Rs.10 lakhs which was borrowed by her for her personal purpose. According to him, it was misused. He also pointed out that the date of letter given to the bank for stop payment was 24.10.2007, which itself showed that the cheque was issued only as a security long back though the cheque



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was dated 18.08.2012. It was also contended by him that the accused had availed a loan of Rs.10 lakhs only, which she had liquidated by pledging her jewellery.

5. Per contra Mr.P. Dhananjayan, learned counsel for the respondent argued that the presumption under Section 139 of the Negotiable Instruments Act was not rebutted by the accused in any manner. According to him the accused could not prove that she had liquidated the liability she had incurred. It was further contended that when the accused did not deny her signature on the cheque or even the issuance of the cheque, the offence is proved. Thus the offence under Section 138 of NI Act was clearly proved and there was no scope for any interference by this Court. He appealed for dismissal of the appeal.

6. There are certain important aspects to be pointed out in the instant case.

a) The appellant has claimed that she had borrowed only Rs.10 lakhs.

But in the letter to the bank for stop payment she had mentioned three



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cheques, viz., one cheque (030781) for Rs.10 lakhs another for Rs.7 lakhs (030782) and the third one (030783) blank. Therefore it is clear that the amount borrowed by her was more than Rs.10 lakhs and not just Rs.10 lakhs. As per Ex.P1 MOU it is Rs.30 lakhs.

- b) There was no evidence marked by the appellant to substantiate the repayment of the loan. Had she repaid the loan she ought to have adduced satisfactory evidence for that.
- c) Though the letter dated 24.10.2007 addressed to the bank by the appellant (Ex.D1) for 'countermanding the payment' of three cheques, the cheque for Rs.30 lakhs bearing No.030783 was dishonoured for the reason "Account closed". Thus it is clear that the account was closed by her subsequently. Interestingly, even on the date of the letter 24.10.2007, the balance in her account was only a paltry Rs.3,885/20. Thus her intent is exposed.

These three aspects coupled with the failure on the part of the accused to rebut the presumption that there exists a legally enforceable liability as envisaged in Section 139 of NI Act, confirms the guilt of the appellant.



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7. I find no reason to interfere with the verdict of the trial court or the appellate court.

8. In the result,

- i. the Criminal Revision is dismissed.
- ii. The judgment dated 19.09.2018 passed by the learned VI Additional Judge, City Civil Court, Chennai in Crl.A. No.274 of 2016, and the judgment dated 17.10.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore at Allikulam, in C.C.No.5205 of 2012, are confirmed.
- iii. The petitioner shall surrender before the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore at Allikulam, within 15 days from the date of receipt of a copy of this order, failing which, the Trial Court shall take steps to secure her for undergoing the sentence.

16.08.2023

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Index : yes/no

Speaking /Non speaking Order

9/10



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R.HEMALATHA, J.

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Pre-Delivery order in
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