



Crl.R.C.No.1362 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1362 of 2017

M. Sivabakiyam

... Petitioner

Vs.

K. Kulanthaivel

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to set aside the order dated 21.06.2017 in C.A.No.60 of 2016 passed by the II Additional District Sessions Court, Tirupur confirming the order of conviction in C.C.No.13 of 2015 by Fast Tract Court, Tirupur.

For Petitioner : Mr. S.M. Muralidharan

For Respondent : Mr. Maruthi Raj,
Legal Aid Counsel

ORDER

This Criminal Revision Case is filed against the concurrent finding of the Courts below holding the petitioner guilty of offence under Section 138 of Negotiable Instruments Act.



2. In C.C.No.13 of 2015, the trial Court by judgment dated 26.04.2016 found the petitioner guilty, convicted and sentenced her to undergo one year rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. On appeal, the conviction and sentence was confirmed by the II Additional District Sessions Court, Tirupur in C.A.No.60 of 2016. Aggrieved by that, the petitioner has preferred this present petition.

3. The case of the complainant is that the petitioner / accused is a good friend of the respondent / complainant. On 04.06.2012, the petitioner approached the complainant for a loan amount of Rs.7 lakhs for her urgent family need and business expenses and assured to repay the same during December 2012 and the petitioner / accused received the loan amount on 04.06.2012. To discharge the debt she gave a cheque bearing No.993319 dated 10.12.2012 drawn at ICICI Bank, Indira Nagar, Tirupur Branch for a sum of Rs.7 lakh. The complainant presented the cheque in his Bank viz., Indian Overseas Bank, Velampalayam, Tirupur Branch on 10.12.2012, the same was returned on 12.12.2012 with an endorsement "Insufficient



Funds”. Thereafter, statutory notice was issued on 20.12.2012 and same was received by the accused on 21.12.2012. But, she neither repaid the cheque amount nor sent any reply. Hence, the complaint under Section 138 of Negotiable Instruments Act was filed and same was taken on file by the trial Court in C.C.No.13 of 2015.

4. To prove the case, the complainant has examined himself as P.W.1 and 5 documents were marked as Exs.P1 to P5. Ex.P1 is the cheque, Ex.P2 / Bank return memo, Ex.P3 / statutory notice, Ex.P4 / Postal acknowledgement for receipt of the notice by the accused and Ex.P5 is the income tax returns of the complainant for the Assessment Year 2013-2014. Thereafter, the complainant was cross examined by the petitioner. On the side of the defence, no witness was examined or document marked. On conclusion of the trial, the trial Court convicted the petitioner and it was confirmed by the lower appellate Court, as stated above.

5. The contention of the learned counsel for the petitioner is that the trial Court as well as the lower appellate Court failed to consider that the



respondent / complainant had produced no other documents except the cheque to prove that he advanced such a huge amount of Rs.7 lakh without coverage of any security or other documents. Further, he submitted that it is strange to see that the respondent admits that on the same day i.e., on 04.06.2012, he arranged Rs.7 lakhs, though on that day he was having only an amount of Rs.3 lakhs with him and he had arranged balance Rs.4 lakhs from his friend, Karupasamy of Amma Palayam, which is highly improbable. The respondent / complainant have no source of income to advance such huge amount.

5.1. The specific case of the petitioner is that earlier, she had taken a loan of Rs.50,000/- at that time the cheque/Ex.P1 was given as security and Rs.50,000/- had been repaid by her. Thereafter, the respondent had not returned the security cheque and later filled up with such huge amount of Rs.7 lakhs and lodged a false complaint. He further submitted that the Hon'ble Apex Court in the case of ***John K. Abraham Vs. Simon C. Abraham and Another*** reported in ***(2014) 2 SCC 236*** had held that the presumption under Sections 118 and 139 of the Negotiable Instruments Act was not irrebuttable presumption, once the petitioner is able to dislodge the



presumption and probabilise her defence, it is for the complainant to thereafter to prove beyond reasonable doubt, that the petitioner had committed the offence. Further, in the case of ***Rangappa Vs. Sri Mohan*** reported in ***2010 (4) CTC 118***, the Hon'ble Apex Court had held that it is not always necessary that the accused has to step into the box to disprove his case with available materials and by way of cross examination, he can probabilise his defence and the same can be considered. In this case, during the cross examination, the complainant had admitted that in Ex.P5 / income tax return, he has not shown the loan advancement to the petitioner. Further, his income is not commensurate to the loan extended. But, the trial Court as well as the lower appellate Court failed to consider the same.

5.2. On the other hand, they have proceeded on the fact that the petitioner admitted her signature and the issuance of the cheque and hence, presumption under Section 118 and 139 of the Negotiable Instruments Act, would come into play and convicted the petitioner, which is not proper, in view of the apex Court judgments and the provision of law. Hence, prayed to allow the revision.



6. Mr.Maruthi Raj, the learned Legal Aid Counsel appearing for

the respondent / complainant submitted that in this case, the petitioner had not denied the issuance of cheque. The signed cheque had been issued by the petitioner to the respondent is not disputed. Once a signed cheque is given, it gives an authority under Section 20 of the Negotiable Instruments Act, to the holder of the cheque to fill up, in view of the same, the defence of the petitioner cannot be accepted. The trial Court, for this reason had rightly convicted the petitioner and the lower appellate Court, on independent assessment of the material and evidence, had rightly convicted the petitioner. Further, the petitioner had not produced any material to show that the amount of Rs.50,000/-, earlier taken as loan, has been repaid. The petitioner, after receipt of the statutory notice/Ex.P3, failed to send any reply. For the first time in the trial, the petitioner takes such a defence in this case, hence, the statutory presumption is staring against the petitioner which she failed to dislodge and failed to probabalise any defence, hence, prayed for dismissal of the revision.



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7. On considering the rival submissions and perusal of the materials, it is seen that the petitioner's defence is that the respondent / complainant has got no source of income to pay such huge amount of Rs.7 lakhs, as loan, to the petitioner. Further, the petitioner had sought for the loan one week prior to 04.01.2012 and within a short period, he had arranged Rs.7 lakhs by borrowing Rs.4 lakhs from Karuppasamy of Ammapalayam and had given the loan to the petitioner. The respondent further submits that the loan was for interest and thereafter, a cheque dated 10.12.2012 was issued. He further admits that the petitioner had not paid any interest during this period and he also admits in the evidence that he had not mentioned anywhere about the rate of interest, for which, the loan was advanced. The person who said to have given loan during the 6th month 2012 and received a cheque in the 12th month, for the period of 7 months, what is the interest and how the interest is collected and why it is not reflected in the repayment cheque, no particulars have been given. Further, from Ex.P5/ income tax returns for the Assessment Year 2013-2014, it is seen that the advancement of loan to the petitioner is not disclosed.



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8. On perusal of the income tax returns, it is seen that the petitioner's Annual Income is Rs.3,85,047/-. In the annexure to the income tax returns, it is seen that the petitioner has shown loans and advance of Rs.7,97,500/-. In the income tax returns, he has shown the loan paid to the petitioner on 04.06.2012, but this income tax return has been prepared and submitted on 17.03.2014. The complaint was filed initially on 29.11.2012 and thereafter, on 10.01.2013, the income tax return has not been produced or listed as a document.

9. The contention of the petitioner is that the income tax return has been prepared to suit the case of the respondent gains credence, for the reason that apart from the petitioner, there is no loan or advance made to any other person. Further, the petitioner admits that he had taken Rs.4 lakhs from one Karuppasamy of Ammapalayam, there is no reference about this liability in the income tax return.



10. In such circumstances, the respondent will not be able to give loan to the petitioner and that too without any interest. No interest aspect is calculated, projected and demand by the respondent. The Income derived from power table contract is only a labour charges and this amount had been appropriately accounted without any surplus. The petitioner admits that apart from her business, she has got no other business.

11. In view of the same, this Court finds the respondent has got no other source to extend such huge amount, as loan, to the petitioner. The respondent failed to examine the said Karuppasamy to confirm the loan he had taken from him and there is no reference or disclosure from the income tax return about the same. In view of the same, this Court finds that the petitioner had probalised her defence and her explanation gains credence. The respondent failed to prove the case against the petitioner beyond reasonable doubt.



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12. Accordingly, this Court allows the Criminal Revision by setting aside the judgments of the Courts below.

13. Rs.1 lakh which has been deposited by the petitioner / accused to the credit of C.C.No.13 of 2015 on the file of the Fast Track Magistrate Court, Tirupur in Crl.M.P.No.13254 of 2017, while granting suspension of sentence, is directed to be returned to her.

14. This Court records its appreciation to Mr.Maruthi Raj, learned counsel appeared on behalf of the respondent, who was appointed by the legal aid, to represent the respondent, for his able assistance to the Court.

10.01.2023

Index : Yes/No
Speaking / Non-speaking

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To

1.The II Additional District Sessions Court, Tirupur.

2.The Fast Tract Court, Tirupur.



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M.NIRMAL KUMAR,J.

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