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Crl.R.C.No.127 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.06.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.127 of 2020

Bhanumathi

.. Petitioner

Vs.

K.K.Rajesh

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment dated 07.02.2019 passed by the II Additional Sessions Judge at Puducherry in C.A.No.32 of 2014 modifying the judgment of conviction and sentence passed in STR No.1803 of 2013 on the file of Judicial Magistrate, Mahe.

For Petitioner : M/s.P.Sesubalan Raja

For Respondent : Mr.Hari Prasad

ORDER

This Criminal Revision Case is filed challenging the judgment of the Courts below convicting the revision petitioner for the offence under Section 138 of Negotiable Instruments Act.



Crl.R.C.No.127 of 2020

WEB COPY

2. The sum and substance of the complaint against the revision petitioner is that, he gave a cheque to the complainant for a sum of Rs.7,50,000/- to discharge the debt incurred. The said cheque dated 23.05.2013 presented for collection returned for the reason “Insufficient of Fund” and hence the complaint after causing statutory notice.

3. The accused in the reply notice as well as in the course of cross examination of the witnesses, had taken a defence that five blank cheques were given along with two stamp papers by the accused and her husband through the complainant as a security for the loan advanced to one Sivaraman, who wanted money to go Gulf. It was informed to them that those cheques were burnt in fire, therefore they did not care about the cheques, however misused the cheque by the complainant and they do not owe any money from the complainant. However, the Courts below have disbelieved the defence since not from the cheques. The witness PW.2 has spoken about the prosecution and having admitted his signature in the cheque. There is no probable defence put forth by the accused, the trial Court has sentenced the accused to undergo one year Simple



Crl.R.C.No.127 of 2020

Imprisonment and fine of Rs.1,000/-, in default to undergo 3 months Simple Imprisonment.

4. The lower appellate Court, which confirmed the conviction, modified the sentence to the effect that the accused shall undergo six months Simple Imprisonment and to pay a fine of Rs.10,000/-, in default two months Simple Imprisonment.

5. Aggrieved by the same, the accused has preferred this Revision Case on the ground that without any fundamental fact to prove the source of loan of Rs.7,50,000/-. Taking advantage of the blank cheque signed and given as a security to the third party, the present complaint has been filed. The Courts below has failed to appreciate the lacuna in the complainant case.

6. The learned counsel appearing for the revision petitioner reports that he has no instructions and not ready to argue the case.



Crl.R.C.No.127 of 2020

WEB COPY

7. Heard the learned counsel appearing for the respondent and perused the records.

8. On considering the complaint and reply notice as well as the defence taken by the accused, which is not supported by any evidence oral or document, mere failure on the part of the complainant to show his source *per se* will not dislodging his complaint, particularly while there is a substantial admission of borrowing by the accused. The cheque was given in the course of money transaction and he did not deny that the complainant and the accused are not known to each other. Taking note of the fact that the Courts below have convicted the accused for issuing the cheque without sufficient balance in the account and convicted to undergo 6 months Simple Imprisonment and to pay a fine of Rs.10,000/-, in default 2 months Simple Imprisonment is not an excessive punishment for the said offence. Hence this Court is not inclined to interfere with the findings of the Courts below. The modified sentence passed by the lower appellate Court stands confirmed.



Crl.R.C.No.127 of 2020

WEB COPY

9. In the result, this Criminal Revision Case is dismissed.

05.06.2023

Internet : Yes/No

Index: Yes/No

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To

1.The II Additional Sessions Judge at Puducherry

2.The Judicial Magistrate, Mahe.



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Crl.R.C.No.127 of 2020

Dr.G.JAYACHANDRAN, J.

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