IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

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

Crl.RC.No.1321 of 2023
&
Crl.MP. No. 10960 of 2023

V. Flora Jenifer ...Petitioner

vs.

V.C. Ravichandran ...Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, 1973 against the judgment dated 06.04.2022 passed by the learned Principal Sessions Judge, Salem, in Crl. Appeal No.19 of 2020, confirming the judgment dated 08.01.2020 passed by the learned Judicial Magistrate No.VI, Salem, in CC No.100 of 2013.

For Petitioners : Mr. K. Ramesh Kumar

ORDER

The present Criminal Revision is filed against the judgment dated 06.04.2022 passed by the learned Principal Sessions Judge, Salem, in Crl. Appeal No.19 of 2020, confirming the judgment dated 08.01.2020 passed by the learned Judicial Magistrate No.VI, Salem, in CC No.100 of 2013.

2. This Criminal Revision case is posted before this Court for admission and the same is decided at the admission stage itself.

3. For the sake of convenience the revision petitioner/accused is referred to as accused and the respondent/complainant is referred to as complainant.

4. The brief case of the complainant is as follows:

i. The accused borrowed a sum of Rs.10 lakhs from the complainant on 22.05.2009 to meet her urgent business expenses and for the development of her educational Institution and executed a Promissory Note (Ex.P1) promising to repay the same with interest on demand by the complainant or to his order.

ii. When the complainant demanded the accused to repay the principal amount with interest, the accused did not pay either the principal or the interest. However, on 22.07.2010 she (accused) issued a cheque (Ex.P2) bearing No.207008 drawn on ICICI bank, Dharmapuri Branch for Rs.13,15,000/-.

iii. When the cheque was presented for collection on 23.07.2010 by the complainant through his banker namely Deutsche Bank AG, Salem Branch, the same was returned on 24.07.2010 for the reason 'insufficient funds', as is seen from the Cheque return memo (Ex.P3).

iv. Thereafter the complainant issued a legal notice dated 27.07.2010 (Ex.P4) to the accused demanding the latter to make good the payment within 15 days from the date of receipt of the said notice.

v. The accused though received the notice on 29.07.2010, as is seen from the postal acknowledgment card (Ex.P5), did not come forward to make good the payment and did not also send any reply.

vi. Therefore the complainant filed a private complaint under Section 200 Cr.P.C. against the accused for the offences punishable under Sections 138 and 142 Cr.P.C., in S.T.C. No.673/2010 before the Judicial Magistrate No.4, Salem and the same was transferred to the file of Judicial Magistrate No.6, Salem, and renumbered as C.C. No.100 of 2013 as per the orders of Chief Judicial Magistrate in M.P. No.1627/12 dated 05.03.2013.

vii. The learned Judicial Magistrate No.6, Salem, took cognizance of the offences and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the copies of the case records were furnished to her under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the matter was posted for trial.

viii. The complainant examined himself and marked Ex.P1 to Ex.P5.

ix. Thereafter the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the circumstances appearing in evidence against him. The accused denied of having committed any offence.

x. She examined 3 witness on her side and marked Ex.R1.

xi. After analysing the oral and documentary evidence adduced on both sides, the learned trial court judge, vide his judgment dated 08.01.2020, held that the accused is guilty of an offence punishable under Section 138 of the NI Act and sentenced her to undergo simple imprisonment for a period of three months and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for a further period of one month. The trial Court further directed the accused to pay a compensation of Rs.13,15,000/- to the complainant under Section 357 Cr.P.C.

xii. Aggrieved over the conviction and sentence passed by the trial court, the accused filed an appeal in Crl.A. No.19/2020 before the Principal Sessions Judge, Salem.

xiii. The learned Principal Sessions Judge, Salem, after analysing the oral and documentary evidence adduced on both sides confirmed the findings recorded by the trial court.

xiv. Aggrieved over the same, the present Criminal Revision is filed by the accused.

5. Mr. K. Ramesh Kumar, learned counsel for the Revision Petitioner contended that though the complainant in his complaint had specifically stated that the accused borrowed loan from him for educational expenses of her son and for business expansion, in his proof affidavit it is mentioned that the accused borrowed loan for developing her educational Institution. It is also his contention that the complainant did not adduce any evidence to show that he had wherewithal to lend such a huge amount of Rs.10 lakhs to the accused and that the accused was not given an opportunity to cross examine any of the witnesses

examined on the side of the prosecution. He therefore contended that the conviction and sentence passed by both the courts below are totally perverse.

6. At the outset, it may be observed that the accused did not deny her signature on the cheque (Ex.P2). Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act unless the contrary is proved by the accused. In the instant case, the accused did not send any reply to the statutory notice (Ex.P4) issued by the complainant though she received the same, as is seen from the postal acknowledgment card (Ex.P5). It is also pertinent to point out that the accused did not get into the witness box.

7. In order to substantiate that the complainant does not have any wherewithal to lend the amount to the accused, the accused filed the statement of bank accounts of the complainant and the same was marked as Ex.R1. It is to be pointed out that it is not the case of the complainant that he lent a sum of Rs.10 lakhs after drawing the same form his account. Moreover, merely because this amount is not indicated in the income tax returns by the complainant, it cannot be held that the complainant did not lend any amount to the accused in the light of the

fact that the accused had admitted his signature on the cheque.

8. All the observations made by both the Courts are perfectly in order. I, therefore, do not see any reason to interfere with the same.

9. In the result,

i. the Criminal Revision Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

ii. the judgment dated 06.04.2022 passed by the learned Principal Sessions Judge, Salem, in Crl. Appeal No.19 of 2020, and the judgment dated 08.01.2020 passed by the learned Judicial Magistrate No.VI, Salem, in CC No.100 of 2013, are confirmed.

iii. The petitioner in Crl.RC. No.1321 of 2023 (accused in C.C. No. 100/2013), shall surrender before the learned Judicial Magistrate No.VI, Salem, within 15 days from the date of receipt of a copy of the order, failing which, the Trial Court shall take steps to secure her for undergoing the sentence.

04.08.2023

bga

Index : yes/no
Speaking /Non speaking Order

R.HEMALATHA, J.

bga

To

1. The Principal Sessions Judge, Salem

2. The Judicial Magistrate No.VI, Salem

Crl.RC.No.1321 of 2023
&
Crl.MP. No. 10960 of 2023

04.08.2023