



Crl.R.C.Nos.428 & 429 of 2020
& Crl.M.P.Nos.3411 & 3412 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.06.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.428 & 429 of 2020
& Crl.M.P.Nos.3411 & 3412 of 2020

P.Shanthi,

... Petitioner/Appellant/Accused
in both cases

/versus/

Balamurugan,

... Respondent/Respondent/Complainant
in both cases

Prayer in Crl.R.C.No.428 of 2020: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., pleaded to call for the records in C.A.No.17/2015, dated 13.08.2019 passed by Additional District Court (FTC) Arani, confirming the judgment passed by Judicial Magistrate, Arani, dated 13.05.2015, made in C.C.No.168/2010 and set aside the same.

Prayer in Crl.R.C.No.429 of 2020: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., pleaded to call for the records in C.A.No.18/2015, dated 13.08.2019 passed by Additional District Court (FTC) Arani, confirming the judgment passed by Judicial Magistrate, Arani, dated 13.05.2015, made in C.C.No.169/2010 and set aside the same.

For Petitioner : Mr.B.Jawahar



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in both cases

For Respondent : Mr.T.Ramesh Kumar,
in both cases for Mr.T.Vijayan

COMMON JUDGMENT

These two Criminal Revision Petitions are preferred against the concurrent finding of the Courts below holding the petitioner guilty of issuing cheque bearing No.035240 dated 20.04.2010 for a sum of Rs.1,00,000/- drawn on Axis Bank, in favour of Balamurugan and another cheque bearing no.035224 for sum of Rs.3,00,000/- dated 01.05.2010 drawn on Axis Bank in favour of complainant/Balamurugan.

2. According to the complainant, the money was borrowed by the accused Tmt.Shanthi W/o.Palani, as a hand loan and to discharge the said loan, the above two cheques were given. When both these cheques were presented for collection on 28.05.2010, same was returned with an endorsement “funds insufficient”. After causing separate statutory notice for each cheque, the complaint been filed.

3. To prove the complaint, the complainant (P.W.1) and two other



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witnesses (P.W.2 & P.W.3) was examined, 6 exhibits were marked (Ex.P.1 to Ex.P.6). On the part of the accused in C.C.No.168 of 2010, she was subjected herself for examination and had marked 4 exhibits (Ex.D.1 to Ex.D.4). Identical defence taken in other cases also and therefore, no separate witness or document marked in the other complaint in C.C.No.169 of 2010.

4. The case of the complainant is that, the two cheques which is the subject matter of his complaint arose out of the money transaction between him and the accused and those cheques were given to discharge the debt.

5. The defence taken by the accused is that, there was money dealing with the complainant by her husband and the cheque given as collateral security been misused by the complainant, who is a money lending sharks. He used to collect exorbitant interest and threat the borrowers with dire consequence. Even after filing this complaint, he indulge in intimidation which resulted in giving a complaint to the police on 28.05.2010. After enquiry, closure report was filed considering the statement given by the complainant that, he has lend only Rs.1,70,000/- to the husband of the accused for which, he has already initiated



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criminal proceedings and he will not indulge in intimidating the borrowers, neither he will meet them or talk with them.

6. The accused relying upon these documents as a proof for rebuttal, had canvas the trial Court as well as the Appellate Court for acquittal. However, the Courts below has rejected the said defence and held that the accused admits the signatures found in the cheque marked as Exhibits (Ex.P.1). She admits receipt of the statutory notice but had not replied to the notice, thereafter, she has given the complaint to the police and the Ex.D.1 to Ex.D.4 are subsequent to the complaint and the statement given to the police is admissible in evidence.

7. The Learned Counsel for the petitioner would submit that the cheque was not given for any consideration been probalilised by the accused by examining herself as D.W.1 (Shanthi). Cross examining the complainant who mounted the witness box as P.W.1, besides the corroboration by way of statement of the complainant before the police which is marked as Ex.D.4 suffices to show that the cheques were not issued in the manner alleged by the complainant or for the amount found on the cheque.



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8. Per contra, the Learned Counsel for the respondent/complainant submitted that the money transaction having been admitted and the genuineness of the cheque is not disputed. The defence taken by the accused relying upon Ex.D.1 to Ex.D.4 has no force or reliability. Further, the Learned Counsel submits that, the admission of statement in Ex.D.4 alleged to have been given to the police has to be ignored since it is inadmissible.

9. Heard the Learned Counsel for the Petitioner and the Learned Counsel for the respondent. Records perused.

10. It is a case of cheque dishonour. The drawer of the cheque had not disputed the genuineness of the cheque, only the passing of consideration is disputed. The complainant by examining herself and other two witnesses have prima facie established the passing of consideration. On the part of the accused, it is contended that, the money dealing is only between the complainant and the husband of the accused. The accused never brought money from the complainant. The statement of the complainant to the police is not *per se* inadmissible, since it



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is given in a collateral proceedings and same been admitted by the complainant while he was cross examined in this case. Having probalised that the due payable is only Rs.1,70,000/-, the two cheques one for Rs.1,00,000/-, another cheque for Rs.3,00,000/- deemed to be given without taking any consideration.

11. This Court is unable to countenance the said submission, since the accused had not rebutted the claim through reply notice or by examining the witness, who could speak about the money transaction. That apart, the accused projects that, her husband alone had money transaction and her cheque given as security been misused. To substantiate this fact her husband had not mounted the witness box to corroborate the version, the other defence raised by the accused such as the complaint to the police and the enquiry proceedings of the police based on her complaint.

12. As pointed by the Courts below, the police complaint by the accused has been emanated after filing the private complaint under Section 138 of N.I. Act. To be precise, the private complaint was filed on 02.06.2006. Whereas, the accused has given a complaint to the police alleging, she has been intimidated



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by the complainant on 28.06.2010 and the course of enquiry, statement given by the Balamurugan admitting that, he has paid only Rs.1,70,000/- to Mr.Palani, the husband of the accused and in this regard, he has initiated criminal proceedings. This statement given in the course of enquiry by Police does not whisper about the criminal complaint filed against the revision petitioner. It is not known that, whether the complainant had initiated any other criminal proceedings against Thiru.Palani, the husband of the petitioner in connection with the borrowing of Rs.1,70,000/-. To correlate this statement with the averments made in the complaint without material is beyond legal comprehension. Therefore, this Court finds no merit in these two Criminal Revision Petitions. Hence, these ***Criminal Revision Petitions are dismissed.*** Consequently, connected Miscellaneous Petitions are closed.

15.06.2023

Index :Yes/No.
Internet :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,
1. The Additional District Court (FTC) Arani.



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2. The Judicial Magistrate, Arani,

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Dr.G.JAYACHANDRAN.J.,

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