



Crl.R.C.(MD)No.67 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.67 of 2019
and
Crl.M.P(MD) No. 1474 of 2019

Getshi

... Petitioner/ Appellant / Accused
vs.

K.Sornalingam (Died)
through his wife
Ezhil Annam

... Respondent/Respondent / Complainant

PRAYER : This Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.38 of 2013 dated 30.01.2019 on the file of the learned 4th Additional District and Sessions Court, Tirunelveli confirming the judgment and modifying the compensation and sentence passed in C.C.No.32/2003 dated 30.05.2013 on the file of learned Judicial Magistrate, Valliyoor.

For Petitioner : No Appearance

For Respondent : Mr.M.Gregory Retna Raj



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ORDER

This Criminal Revision Petition has been filed to set aside the judgment passed in C.A.No.38 of 2013 dated 30.01.2019 on the file of the learned 4th Additional District and Sessions Court, Tirunelveli confirming the judgment and modifying the compensation and sentence passed in C.C.No.32/2003 dated 30.05.2013 on the file of learned Judicial Magistrate, Valliyoor.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the accused borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to improve her business on 20.07.2002. she also promised to repay the same within a period of six weeks. In order to repay the said loan, she issued a cheque and the same was presented for collection. However, it was returned as dishonored for the reason 'funds insufficient'. After issuance of notice as contemplated under Section 138 of N.I. Act, the respondent lodged a complaint.



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4.On the side of the respondent, he had examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.9. On the side of the accused, she had examined D.W.1 and D.W.2 and marked Ex.D.1 to Ex.D.7.

5.On perusal of the oral and documentary evidence, the trial Court found her guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced her to undergo one year Simple Imprisonment and ordered compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) within a period of two months, in default to undergo three months Simple Imprisonment. Aggrieved by the same, the petitioner has preferred an appeal and the same was also dismissed and modified the compensation reduced from Rs.8,00,000/- (Rupees Eight Lakhs only) to Rs.4,00,000/- (Rupees Four Lakhs only). Hence, the present revision.

6.Though this Court has granted so many adjournments for settlement and also for arguments, the petitioner did not take any steps to settle the issue. Today also, no one appeared on behalf of the petitioner.



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7.A perusal of the records revealed that the petitioner raised a ground that he did not borrow any amount as alleged by the respondent and that too, such a huge sum in cash could not be lent without any security. There is contradiction in the deposition of P.W.1 itself. The respondent also failed to produce any income returns in order to prove the source of income. In fact, the petitioner lodged a complaint on 07.10.2002 before the Inspector of Police, Valliyoor, for snatching and stealing of the cheque from the son of the petitioner against the respondent. The Inspector of Police was examined as D.W.2 and he deposed that on the complaint received from the petitioner's husband, the enquiry was conducted and advised to sort out the issue by negotiations. Therefore, the petitioner categorically rebutted the presumption as contemplated under Sections 118 and 139 of the Negotiable Instruments Act. Even then, both the Courts below mechanically convicted the petitioner.

8.Per contra, the learned counsel appearing for the respondent would submit that even before this Court, the petitioner sought time to settle the matter on several occasions. In fact, the sentence itself is not



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yet suspended till today. However, the respondent could not be able to execute the sentence. Considering the evidence on record, both the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

9.Heard. Perused the materials available on record.

10.According to the respondent, the petitioner borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to develop her business. After demand, the petitioner issued a cheque for the said sum. It was presented for collection and the same was returned as dishonored for the reason 'funds insufficient'. The petitioner also did not put any signature. However, the petitioner disputed the issuance of cheque. According to the petitioner, it was forcibly taken/stolen by the respondent from the hands of her son on 07.10.2002. Therefore, on 07.10.2022, her husband lodged a complaint and the same was enquired by D.W.2. D.W.2 directed the petitioner and the respondent to settle the issue amicably.



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11.A perusal of records revealed that on receipt of the statutory notice, the petitioner issued a reply notice, which was marked as Ex.P.6. In the reply notice, she stated that the cheque, which was marked as Ex.P.1 was forcibly taken from her son on 07.10.2002 along with hand bag. A perusal of the C.S.R. complaint also revealed that on the allegation that the husband of the petitioner borrowed loan from the respondent, due to which, there was a dispute. If at all, on 07.10.2002, the respondent forcibly had stolen the cheque along with the hand bag, the crux of the complaint would have been the stealing of cheque and handbag, whereas, the said complaint has not whispered about the stolen of cheque and handbag from the hands of the petitioner's son. Though the petitioner had examined the Inspector of Police (D.W.2), he also did not support the case of the petitioner. In fact, on receipt of the reply notice, the respondent issued a rejoinder to the reply notice, which was marked as Ex.P.7. A perusal of Ex.P.7 revealed that the respondent completely denied the story created by the petitioner in order to escape from the clutches of the proceedings initiated under Section 138 of the Negotiable Instruments Act. Though the petitioner had taken a specific stand that the cheque was issued as security purpose in favour of the third party



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without filling the same and the same was misused by the respondent, the petitioner has failed to substantiate the same with cogent evidence. However, the stand taken by the petitioner was that a cheque was stolen from her son by the respondent. It was also not substantiated with any evidence. Therefore, the petitioner failed to rebut the presumption as arisen under Sections 118 and 139 of N.I. Act. Hence, both the Courts below rightly convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and this Court finds no infirmity or illegality in the order passed by the Courts below. Insofar as the sentence is concerned, this Court is inclined to modify and reduce the compensation from Rs.8,00,000/- (Rupees Eight Lakhs only) to Rs. 5,00,000/- (Rupees Five Lakhs only).

12. Accordingly, the conviction imposed by the Courts below for the offence punishable under Section 138 of the Negotiable Instruments Act is hereby confirmed and insofar as the sentence is concerned, it is set aside on condition that the petitioner shall deposit Rs.5,00,000/- (Rupees Five Lakhs Only) to the credit of C.C.No.32 of 2003 on the file of learned Judicial Magistrate, Valliyoor, on or before **21.08.2023**. On such



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deposit, the respondent is permitted to withdraw the entire amount by way of filing an application. If the petitioner fails to deposit the said amount, the sentence imposed by the Courts below is hereby restored without any further reference to this Court and the respondent is at liberty to take appropriate steps to execute the conviction and sentence as against the petitioner in the manner known to law.

13. Accordingly, this Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is closed.

27.06.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The 4th Additional District and Sessions Court, Tirunelveli.
2. The Judicial Magistrate, Valliyoor.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN , J.

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