



Crl.O.P.(MD).No.833 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Santhakumari Ammal

... Petitioner

Vs.

Madhavikutty Amma

... Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C.,to call for the records and set aside the order dated 29.06.2018 made in Rev.Pet.No.3 of 2011 passed by the learned Principal Sessions Judge, Kanyakumari District at Nagercoil enhancing the sentence passed in S.T.C.No.1444 of 2006,dated 31.05.2010 by the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District.

For Petitioner : Mr.G.Ramanathan

For Respondents : No appearance



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ORDER

This Criminal Original Petition has been filed to set aside the order dated 29.06.2018 made in Rev.Pet.No.3 of 2011 passed by the learned Principal Sessions Judge, Kanyakumari District at Nagercoil enhancing the sentence passed in S.T.C.No.1444 of 2006 dated 31.05.2010 by the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District.

2. The petitioner is the accused in S.T.C.No.1444 of 2006, on the file of the learned Judicial Magistrate, Padmanabhapuram. The respondent initiated the proceeding against the petitioner under Section 138 of the Negotiable Instruments Act with the following allegations:

2.1.The petitioner herein received a sum of Rs.6,00,000/- from the defacto complainant as an advance, promising to sell 4 ares 5 square metre of land. Subsequently, he sold the properties to the third parties. Therefore, the respondent herein had demanded the return of money. Pursuant to which, the petitioner issued two cheques. The respondent while presenting the cheque before the bank, the same was returned with the reason as



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insufficient funds. Thereafter, on 19.09.2003, the defacto complainant issued a statutory notice. However, the petitioner did not make any payment. Hence, the respondent initiated the proceedings in S.T.C.No.1444 of 2006.

2.2.The defacto complainant namely the respondent produced the documents Ex.P1 to Ex.P10 and examined himself as P.W.1.

2.3.The learned trial Judge, after considering the evidence, passed conviction and imposed a fine of Rs.5,000/-. Thereafter, the defacto complainant preferred the revision before the Sessions court in R.C.No.3 of 2011, challenging the order on the ground that the compensation was not awarded and also the enhancement of sentence was ordered. The petitioner also filed an appeal in C.A.No.69 of 2010, both the petitions were heard together. The learned Sessions Judge dismissed the appeal filed by the petitioner and allowed the revision case and enhanced the sentence of six months and also directed to pay the cheque amount of Rs.6,00,000/-. Challenging the said order, the petitioner herein has filed this revision.



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3.The learned counsel for the petitioner submitted that both the Courts below without any proof for the payment of said amount, convicted the petitioner under Section 138 of the Negotiable Instruments Act. He would further submit that the cheque amount was only Rs.5,50,000/-, but the compensation awarded by the learned appellate Judge was Rs. 6,00,000/-, is not in accordance with law. The learned Appellate Judge also enhanced the sentence from 3 months to 6 months of imprisonment without any sufficient reasons. Hence, he seeks to interfere with the orders of the Courts below.

4. Even after service of notice, the respondent did not appear before this Court either in person or through his counsel.

5. This Court considered the submission made by the learned counsel for the petitioner and perused the impugned orders passed by both the Courts below and also the records annexed with S.T.C.No.1444 of 2006.



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6.The petitioner entered into a sale agreement with the defacto complainant namely the respondent herein and received the advance amount. To repay the said advance amount, he issued the cheque and the same was dishonored. The statutory notice was issued in time and there was no repayment. The cheque was issued in support of legally enforceable debt. The respondent proved his case in accordance with law and the petitioner has not adduced evidence to rebut the presumption under Section 139 of the Negotiable Instruments Act. The above all aspects had been correctly appreciated by both the Courts below and there is no ground to interfere with this petition. The Hon'ble Supreme Court in number of cases has held that the revisionary power under Section 379 r/w 401 of Cr.P.C., is limited one and this Court has no jurisdiction to interfere with the concurrent finding if it is not without any perversity. Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

7.Further, the learned appellate Judge has considered the nature of the transactions and also held that the advance amount was in the custody of



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the petitioner for the past number of years and enhanced the sentence of imprisonment from three months to six months and directed to pay Rs. 6,00,000/- as compensation by giving opportunity to the petitioner. This Court finds no infirmity in the said exercise of the learned appellate Judge. The Hon'ble Supreme Court reiterated the principle that the Court should grant compensation and impose adequate sentence of imprisonment.

8. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

22.11.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbm

To

- 1.The Principal Sessions Judge,
Kanyakumari District at Nagercoil.
- 2.The Judicial Magistrate,
Padmanabhapuram,
Kanyakumari District.



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K.K.RAMAKRISHNAN, J.

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