



Crl.R.C(MD)No.936 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.936 of 2017

Selvanayagi

... Petitioner/
Appellant/Sole Accused

Vs.

1.John Bosco Fidelis

2.The State,

Represented by Special Public Prosecutor,
Nagercoil,
Kanyakumari District.

... Respondents/
Respondents/Complainants

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the Judgment dated 19.09.2017 in C.A.No.15 of 2012 on the file of the learned Fast Track Mahila Court, Nagercoil, confirming the Judgment of conviction passed in C.C.No.117 of 2009, dated 11.02.2012 on the file of the learned Judicial Magistrate No.II, Nagercoil and set aside the Judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.S.Sukumar

For R – 1 : M/s.C.Arockia Selvi

For R – 2 : Mr.M.Vaikkam Karunanithi
Government Advocate (Criminal Side)



WEB COPY



Crl.R.C(MD)No.936 of 2017

ORDER

This revision has been filed to set aside the Judgment made in C.A.No.15 of 2012, dated 19.09.2017 on the file of the learned Fast Track Mahila Court, Nagercoil, confirming the order made in C.C.No.117 of 2009, dated 11.02.2012 on the file of the learned Judicial Magistrate No.II, Nagercoil.

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

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.10,00,000/- from the first respondent and in order to repay the said amount, he issued cheque for the said sum on 23.04.2009. It was presented for collection and the same was returned dishonoured for the reason "funds insufficient". Thereafter, the first respondent caused legal notice and lodged the complaint.



Crl.R.C(MD)No.936 of 2017

4.On the side of the first respondent, he himself was examined as P.W.1 and also marked Exs.P.1 to P.5 and on the side of the petitioner, she himself was examined as D.W.1 and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo one month Simple Imprisonment. The trial Court also ordered compensation of Rs.10,00,000/- in favour of the first respondent, in default, to undergo three months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.15 of 2012 on the file of the Fast Track Mahila Court, Nagercoil, and the Appellate Court also dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Hence, the present revision.

6.The learned counsel appearing for the petitioner would submit that the first respondent failed to prove his case beyond any reasonable doubt, since the first respondent failed to discharge his initial burden as contemplated under Section 138 of the Negotiable



Crl.R.C(MD)No.936 of 2017

Instruments Act. On receipt of the statutory notice, the petitioner issued a reply notice, thereby categorically rebutted the presumption. The petitioner asked about the source of income to lend such huge money. That apart, while lending the said huge money, no other documents were received for security purposes. The first respondent also failed to mention the date of borrowal. In the vague manner, the first respondent stated that on various occasions that too a sum of Rs.1,00,000/-, Rs.2,00,000/- and Rs. 3,00,000/- were borrowed by the petitioner herein. When the first borrowal itself was failed to settle, no prudent man would lend another loan. Further, the case of the first respondent was that though the cheque was issued on 23.04.2009, he admitted that the cheque was directed to present one week after. However, the said cheque was presented on the same day, namely on 23.04.2009 itself. The cheque was not issued for any legally enforceable debt. In fact, the petitioner borrowed only a sum of Rs.50,000/-. She had paid interest regularly and thereafter she also settled the principal amount. The first respondent is being the relative of the petitioner, she did not take any steps to receive the cheque after settling the entire dues which was already borrowed by her. The first respondent also had no source of income to lend such a huge sum of Rs. 10,00,000/-. Therefore, by issuance of reply notice as well as cross-



Crl.R.C(MD)No.936 of 2017

examination, the petitioner categorically rebutted the presumption as contemplated under Sections 118 and 139 of the Negotiable Instruments Act.

7.Per contra, the learned counsel appearing for the first respondent would submit that the petitioner categorically admitted her signature and issuance of cheque. Therefore, the first respondent discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. Though the petitioner had taken a specific stand that she borrowed only a sum of Rs.50,000/- and the same was repaid to the first respondent and when it was repaid, her brother was also present. Even then, the petitioner failed to examine her brother in order to substantiate the said contention. She also failed to produce any iota of evidence to show that she borrowed only a sum of Rs.50,000/- and the same was repaid to the first respondent. Further, even after repayment of the said amount, the petitioner did not take any action as against the first respondent in order to return back the cheque which was issued for security purposes at the time of borrowal of loan. Therefore, the Courts below rightly convicted the petitioner concurrently and it does not warrant any interference.



Crl.R.C(MD)No.936 of 2017

WEB COPY

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.On perusal of the complaint lodged by the first respondent for the offence punishable under Section 138 of the Negotiable Instruments Act revealed that the petitioner had some financial transaction with the first respondent in which a sum of Rs. 10,00,000/- was due from the petitioner. Towards discharge of the said liability, the petitioner issued a cheque dated 23.04.2009 for the sum of Rs.10,00,000/-. The said cheque was presented for collection and the same was returned dishonoured for the reason "funds insufficient". The first respondent caused statutory notice which was marked as Ex.P.3. On receipt of the same, the petitioner issued a reply notice which was marked as Ex.P.5. On perusal of Ex.P.5 revealed that the petitioner denied the borrowal of Rs.10,00,000/- from the first respondent. The petitioner borrowed only a sum of Rs.50,000/- and agreed to pay 36% interest per annum. Accordingly, she had been paying the interest regularly and also returned the principal amount of Rs.50,000/- to the first respondent in the month of December 2008. Though the petitioner



Crl.R.C(MD)No.936 of 2017

made a request to return the cheque, which was received as security at the time of borrowal of Rs.50,000/- as loan, the first respondent failed to return the original cheque. Further, raised the ground that the first respondent had no source of income to lend such a huge sum of Rs.10,00,000/-. Therefore, the cheque which was issued for security purpose had been misused by the first respondent, and it was not issued for any legally enforceable debt. Even then, the first respondent, except the cheque, failed to produce any evidence to prove that the petitioner had borrowed a sum of Rs.10,00,000/- from the first respondent.

10.In fact, the first respondent failed to mention the date of borrowal in the complaint. In the cross-examination of P.W. 1, he deposed that a sum of Rs.10,00,000/- was lent by him from the year 2008-2009. It was not borrowed by the petitioner in one lumpsum. It was lent by Rs.1,00,000/-, Rs.2,00,000/- and Rs.3,00,000/- on various occasions. Therefore, on borrowal of the first amount like Rs.1,00,000/- or Rs.2,00,000/- or Rs.3,00,000/-, without returning the said amount, no prudent man would lend another huge sum. Even according to the first respondent, the petitioner borrowed totally a sum of Rs.10,00,000/-. Further,



Crl.R.C(MD)No.936 of 2017

alleged that the petitioner borrowed a loan from 6th month of 2007 to December 2008. Therefore, within the time gap of 1-1/2 years, without collecting the earlier loan, the first respondent might not have lent such a huge amount. Further, the petitioner specifically averred that in the reply notice that the first respondent had no source of income. Even then, the first respondent failed to produce any material to show that she had income and capacity to lend such a huge amount as a loan to the petitioner.

11.As per Section 139 of the Negotiable Instruments Act, the presumption is a matter of principle to facilitate negotiability as well as trade. Under Section 118 of the Negotiable Instruments Act provides presumptions to be raised until the contrary is proved (i) as to consideration, (ii) as to date of instrument, (iii) as to time of acceptance, (iv) as to time of transfer, (v) as to order of endorsements, (vi) as to appropriate stamp and (vii) as to holder being a holder in due course.

12.In the case on hand, though the petitioner admitted her signature and issuance of cheque, the first respondent failed to prove his source of income to lend such a huge loan and also failed



Crl.R.C(MD)No.936 of 2017

to prove that the cheque was issued for legally enforceable debt when specifically denied and reasonably rebutted the presumption by the petitioner.

13.In the proceedings under Section 138 of the Negotiable Instruments Act, the accused has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions, an accused is not expected to prove his defence beyond reasonable doubt, as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him.

14.In the case on hand, as stated supra, the petitioner reasonably rebutted the presumption as that the cheque was not issued for any legally enforceable debt. Therefore, both the Courts below wrongly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. Hence, the



Crl.R.C(MD)No.936 of 2017

conviction and sentence imposed by the Courts below are liable to be set aside.

15.In view of the above, the Judgment made in C.A.No. 15 of 2012, dated 19.09.2017 on the file of the learned Fast Track Mahila Court, Nagercoil, confirming the order made in C.C.No.117 of 2009, dated 11.02.2012 on the file of the learned Judicial Magistrate No.II, Nagercoil, is set aside.

16.Accordingly, the Criminal Revision Case is allowed. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner/accused forthwith.

24.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps



WEB COPY



Crl.R.C(MD)No.936 of 2017

To

- 1.The Fast Track Mahila Court,
Nagercoil.
- 2.The Judicial Magistrate No.II,
Nagercoil.



WEB COPY



Crl.R.C(MD)No.936 of 2017

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.936 of 2017

24.04.2023