IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

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

Crl.R.C.No.10 of 2019 and
Crl.M.P.No.2479 of 2019

S.Krishnaveni
Proprietor of M/s.Sri Dharsini Agencies,
199/2C, Valaraigate Velur Road,
Tiruchengode-637 209. ... Petitioner

Vs.

M/s.Indian Overseas Bank,
Rep. by its Manager Mr.M.Baskaran
Thirunagar Colony Branch,
52A, Meenakshisundaram Street,
Thirunagar Colony, Erode-638 003. ... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment dated 07.09.2018 in CA.No.95 of 2017 passed by the II Additional District Judge cum Additional District Mahila Court (Mahalir Fast Track Court) Erode confirming the Judgment, dated 31.03.2017 passed by the Judicial Magistrate (Fast Track Court-II) Erode in S.T.C.No.474/2016.

For Petitioner : Mr.S.Viswanathan
For Respondent : Ms.Umayal Muthaiah,
for Mr.K.K.Sivashanmugam

ORDER

For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

2. The case of the complainant in a nutshell is as follows:

i. The accused had a current account with the complainant/Indian Overseas Bank, Thirunagar Colony Branch, Erode and she was granted over draft facility to the tune of Rs.77,00,000/-. As on 28.09.2015, the amount due and payable by the accused was Rs.89,54,656/-.

ii. In order to liquidate the said amount, the accused issued two cheques (Ex.P2 and Ex.P3) bearing numbers 955601 and 955602, both dated 29.09.2015 drawn on State Bank of India, Thiruchengode branch, for a total sum of Rs.7,50,000/-.

iii. When the cheques were presented for collection on 29.09.2015 by the petitioner/complainant, the same were returned on 30.09.2015 for the reason 'insufficient funds', as is seen from the cheque return memo (Ex.P4).

iv. Thereafter the complainant issued a statutory notice dated 23.10.2015 (Ex.P5) to the accused calling upon her to pay the amount due under the cheques (Ex.P2 and Ex.P3) within 15 days from the date of receipt of the notice.

v. Though the accused received the said statutory notice, as is evidenced by the postal acknowledgment card (Ex.P7), she 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., in S.T.C.No.474/2016 before the Judicial Magistrate (Fast Track Court-II) Erode.

vii. The learned Judicial Magistrate took cognizance of the offence, issued summons to the accused under Section 204 Cr.P.C., and on her appearance, furnished copies of records under Section 207 Cr.P.C., The substance of accusation was put to the accused and since the accused pleaded not guilty, the case was posted for trial.

viii. In order to bring home the guilt of the accused, the complainant viz., Baskaran, who is the Manager of the Indian Overseas Bank, Thirunagar Branch, Erode examined as P.W1 and marked Ex.P1 to Ex.P7.

ix. Thereafter the accused was questioned with regard to the incriminating circumstances appearing in evidence against her under Section 313 (i) (b) Cr.P.C, and she denied of having committed any offence. She also examined her husband as D.W.1 and marked Ex.D1 to Ex.D4.

x. After full trial, the learned Judicial Magistrate (Fast Track Court-II) Erode, vide his Judgment dated 21.03.2017, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and convicted and sentenced her to undergo Simple Imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of three months.

xi. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.95 of 2017 before the II Additional District Judge, Additional District Mahila Court (Mahalir Fast Track Court), Erode.

xii. The learned II Additional District Judge, Additional District Mahila Court (Mahalir Fast Track Court), Erode, vide his Judgment dated 07.09.2018, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court, aggrieved over which, the present revision is filed by the accused.

3. Mr.S.Viswanathan, learned counsel for the petitioner would contend that the respondent viz., Indian Overseas bank had already initiated proceedings under the provisions of Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act (in short SARFAESI Act) against the accused and two of her properties were brought for sale in public auction. His specific contention is that she had so far paid a sum of Rs.7,50,000/- out of Rs.15,00,000/- and is unable to pay the balance amount at present. It is also his submission that the complainant can realize the balance amount by auctioning her properties.

4. Per contra Ms.Umayal Muthaiah, learned counsel appearing for Mr.K.K.Sivashanmugam, learned counsel for the respondent /

complainant contended that as on 01.04.2024, the amount due and payable by the accused is Rs.2,54,94,553.36/- (Rupees Two Crore Fifty Four Lakhs Ninety Four Thousand Five Hundred and Fifty Three and Thirty six paise) and that the properties brought for sale are not even worth Rs.50,00,000/-. It is also her contention that both the Courts below after analysing the evidence on record, had come to the right conclusion that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and therefore there is no reason for this Court to interfere with the concurrent findings recorded by the Courts below.

5. It is an admitted fact that the accused had availed the credit facility to the tune of Rs.77 lakhs from the complainant bank where she had a current account bearing No.C.C.3009. The statement of accounts (Ex.D1), as on 28.09.2015 shows that the accused is due and liable to pay a sum of Rs.89,54,656/-. In order to liquidate the said amount, the accused had issued two Cheques (Ex.P2 and Ex.P3) and both got dishonoured for the reason 'insufficient funds'.

6. At the outset, it may be observed that the revision petitioner / Accused did not deny her signatures on the cheques (Ex.P2 and Ex.P3), dated 29.09.2015. Once the signature is admitted, there is a presumption under Section 118 and 138 of the Negotiable Instruments Act, unless the contrary is proved.

7. In the instant case, the accused had not even sent any reply notice though she was in receipt of the statutory notice, dated 23.10.2015 (Ex.P5) issued by the complainant bank. The bank has also initiated SARFAESI proceedings against the accused and two of the properties of the accused were brought for sale. SARFAESI proceedings are totally different from the present case and the contention of the counsel for the revision petitioner that the bank can realise the amount by auctioning the properties of the accused, cannot therefore be accepted. The accused had issued the cheques (Ex.P2 and Ex.P3) knowing very well that she did not have sufficient funds on the date of issuance of cheques and subsequent thereto. Both the Courts below had analysed the oral and documentary evidence adduced on the side of the complainant and the accused and had come to a definite conclusion that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act.

8. All the observations made by the Courts below are in order. It is settled law that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate Court. There is nothing on record to conclude that the concurrent findings recorded by both the Courts below are perverse.

9. Considering the age of the petitioner, this Court is inclined to modify the sentence imposed by the Courts below and she is sentenced 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 period of four weeks. The period of sentence already undergone by her, is set off under Section 428 Cr.P.C.

10. In the result,

i. the Criminal Revision Case is Partly allowed;

ii. the Conviction dated 07.09.2018 in C.A.No.95 of 2017 passed by II Additional District Judge, Erode cum Additional District Mahila Court (Mahalir Fast Track Court), Erode is confirmed;

iii. As regards the sentence, it is modified and the accused is directed 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 period of four weeks;

iv. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate, Fast Track Court-II, Erode, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence;

Consequently, connected miscellaneous petition is closed.

06.06.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

R. HEMALATHA, J.

vum

To

1.The II Additional District Judge cum
Additional District Mahila Court
(Mahalir Fast Track Court), Erode.

2.The Judicial Magistrate
(Fast Track Court-II) Erode.

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