



Crl.R.C.No.91 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

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

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A.Venkateswari

... Petitioner

Vs.

N.Ramaiyan

... Respondent

Prayer : Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code 1973 to set aside the judgment and orders dated 19.12.2019 passed in C.A.No.27/2019 by the III Additional District Sessions Court, Erode at Gobichettipalayam, confirming the judgement and orders dated 28.08.2019 passed in S.T.C.No.536/2015 by the Judicial Magistrate Court No.I, Gobichettipalayam.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.S.Parthasarathy



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ORDER

Challenging the conviction and sentence passed by the learned
III Additional District and Sessions Judge, Erode at Gobichettipalayam,
in C.A.No.27/2019 confirming the conviction and sentence passed by the
learned Judicial Magistrate No.I, Gobichettipalayam in
S.T.C.No.536/2015, the present criminal revision case is filed.

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

2.1. The revision petitioner / accused borrowed a sum of
Rs.3,50,000/- from the respondent / complainant on 01.03.2015 and in
order to liquidate the said amount she issued a cheque (Ex.P1) bearing
number 027807 dated 26.03.2015 drawn on HDFC Bank,
Gobichettipalayam in favour of the complainant.

2.2. When the complainant presented the said cheque for
collection on 31.03.2015 through his banker, viz., State Bank of India,



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Gobichettipalayam, the cheque was returned for the reason 'Funds Insufficient' as is seen from the cheque Return Memo dated 02.04.2015 (Ex.P3).

2.3. Therefore, the complainant issued a legal notice dated 08.04.2015 (Ex.P4) to the accused demanding the latter to pay the amount due under the cheque and the said notice was served on the accused on 10.04.2015, as is evidenced by the postal acknowledgement card (Ex.P5).

2.4. The revision petitioner / accused issued a reply notice dated 17.04.2015 (Ex.P6) in which it was stated that

- i. the complainant did not have sufficient means to lend a huge sum of Rs.3,50,000/-.
- ii. the petitioner borrowed a sum of Rs.50,000/- from the complainant in August 2011 and handed over two signed blank cheques and two signed promissory notes to him.



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iii. the revision petitioner is ready to repay the said amount of Rs.50,000/.

2.5. The complainant therefore filed a private complaint before the Judicial Magistrate Court No.I, Gobichettipalayam under section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in S.T.C.No.536/2015.

2.6. The learned Judicial Magistrate Court No.I, Gobichettipalayam took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.

2.7. On the appearance of the accused, the copies of records were furnished under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.



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2.8. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P6.

2.9. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence. She examined herself and marked Ex.D1 to Ex.D3.

2.10. After full trial, the learned trial court judge, vide her judgment and orders dated 28.08.2019, convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo Simple imprisonment for a period of six months and to pay a sum of Rs.3,50,000/- as compensation to the complainant.



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2.11. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.27/2019 before the III Additional District and Sessions Court, Erode at Gobichettipalayam. The learned III Additional District and Sessions Judge, Erode at Gobichettipalayam after analysing the evidence on record, confirmed the findings recorded by the trial court and dismissed the appeal, as against which the present criminal revision case is filed by the accused.

3. Heard Mr.M.Guruprasad, learned counsel for the revision petitioner and Mr.S.Parthasarathy, learned counsel for the respondent.

4. Mr.M.Guruprasad, learned counsel for the revision petitioner would contend that though the accused had questioned the financial capacity of the complainant in her reply notice, the complainant had not proved the same by adducing acceptable evidence. His further contention is that the disputed cheque (Ex.P1) was issued by the revision petitioner only during 2011 and the same has been filled up subsequently



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by the complainant for the purpose of filing the private complaint under Section 200 Cr.P.C. According to him, both the Courts below did not take these two aspects into consideration while convicting the revision petitioner / accused and therefore, the judgement passed by both the Courts below are liable to be set aside.

5. Per contra Mr.S.Parthasarathy, learned counsel for the respondent would contend that the complainant, in order to establish that he possessed of sufficient means, examined himself and his deposition was that he was a retired government servant and he had also sold some of his agricultural lands. According to him, the complainant had clearly stated that he is receiving pension and also joined a chit fund floated by one of the relatives of the revision petitioner / accused. He drew the attention of this Court to the complaint (Ex.D1) lodged by the present complainant against the relative of the accused wherein the complainant had stated that the relative of the accused had failed to repay a sum of Rs.1,32,150/-. He would therefore contend that the complainant had sufficient means to lend a sum of Rs.3,50,000/- and therefore the



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allegation in this regard by the revision petitioner / accused cannot be sustained. His further submission is that in the reply notice (Ex.P6) the revision petitioner admitted her signature on the cheque (Ex.P1). However, she took a u-turn when she examined herself as D.W.1 by deposing that the signature found on the cheque (Ex.P1) is not her signature. In fact both the Courts below had pointed out this contradiction of the revision petitioner / accused. In the circumstances, there is no reason for this Court to interfere with the conviction and sentence passed by both the Courts below.

6. At the outset it may be observed that the accused had not denied her signature on the cheque (Ex.P1) in her reply notice. Once the signature is admitted, there is a presumption under Sections 118 & 139 of the Negotiable Instruments Act, unless the contrary is proved.

7. In the instant case, the revision petitioner examined herself as D.W.1 and denied her signature on the cheque (Ex.P1) which is totally in contradiction to her earlier stand taken by her. Her specific contention



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in the reply notice was that she handed over signed blank cheque to the complainant during 2011 as a security for the loan obtained by her. As regards the financial capacity of the complainant, it is seen from the evidence that the complainant (P.W.1) owns agricultural lands and is a retired government employee receiving pensionary benefits every month. Apart from that, he had joined chit funds floated by the sister of the revision petitioner / accused and since the amount paid by the complainant was not repaid by her (accused sister) he had lodged a complaint with the police and a copy of the FIR is also marked as Ex.D1. Thus it is clear from the evidence on record that the complainant had sufficient means to lend a sum of Rs.3,50,000/- to the accused. All these aspects have been considered by both the Courts below and I do not see any reason to interfere with the concurrent findings recorded by them.

8. In the result,

- i. The Criminal Revision Case is dismissed.
- ii. The judgment dated 19.12.2019 passed in C.A.No.27/2019 by the



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III Additional District and Sessions Judge, Erode at Gobichettipalayam and the judgement dated 28.08.2019 passed in S.T.C.No.536/2015 by the Judicial Magistrate Court No.I, Gobichettipalayam, are confirmed.

iii. The revision petitioner/accused shall surrender before the learned Judicial Magistrate Court No.I, Gobichettipalayam within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure her presence for serving the remaining period of sentence.

23.04.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1.The III Additional District and Sessions Court, Erode at Gobichettipalayam

2.The Judicial Magistrate Court No.I, Gobichettipalayam.

3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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