



Crl.R.C.No.350 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

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

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C.Kowsalya

... Petitioner

vs.

S.K.Sakthivel

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 (1) r/w 401 of the Criminal Procedure Code, praying to set aside the judgment and orders dated 28.01.2020 passed in C.A.No.223 of 2019 by the Second Additional District and Sessions Judge, Erode confirming the judgment and orders dated 05.09.2019 passed in S.T.C.No.555 of 2017 by the Judicial Magistrate, (Fast Track Court No.I), Erode.

For Petitioner : Mr.M.Karthik

For Respondent : No Appearance



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ORDER

Challenging the judgment and order passed by the II Additional District and Sessions Court, Erode in Crl.A.No.223 of 2019, the present Criminal Revision Case is filed.

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

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

- (i) The accused borrowed a sum of Rs.3,00,000/- from him on 10.12.2016 promising to repay the same together with interest at the rate of 18% per annum. She also handed over a Cheque (Ex.P1) on the same date for a sum of Rs.3,00,000/- drawn on State Bank of India, URC Nagar Branch, Erode.
- (ii) When the cheque was presented for collection by the complainant on 12.10.2017, as per the instructions of the accused, through his banker viz., Karnataka Bank, Teachers Colony Branch, Erode, the same was returned on 12.10.2017 for the reason 'funds



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insufficient', as is seen from the Return Memo (Ex.P2).

- (iii) Thereafter, the complainant issued a legal notice on 14.10.2017 (Ex.P3) to the accused demanding the latter to pay the amount due under the cheque within 15 days from the date of receipt of the notice. According to the complainant, the said notice was returned on 25.10.2017 with a postal endorsement 'Door locked, intimation unclaimed'.
- (iv) Since no amount was forthcoming from the accused, the respondent/complainant filed a private complaint under Section 200 of Criminal Procedure Code before the Judicial Magistrate, Fast Track Court No.1, Erode in S.T.C.No.555 of 2017 against the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Act, 1881.
- (v) The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 of Criminal Procedure Code. On the appearance of the accused, the Judicial Magistrate furnished copies of the records to her under Section 207 Cr.P.C. When the accused was questioned with regard to



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substance of accusation made against her under Section 251 of Cr.P.C., the accused pleaded not guilty.

- (vi) The complainant examined himself and marked Ex.P1 to Ex.P4.
- (vii) The accused was questioned with regard to the incriminating circumstances appearing in evidence against her under Section 313 (1) (b) of Criminal Procedure Code and she denied of having committed any offence.
- (viii) She also stated that she borrowed a sum of Rs.1,00,000/- from one Sundar and handed over six signed blanks cheques to him as security.
- (ix) Though she repaid the entire amount to the said Sundar, he did not return the signed blank cheques to her and his mobile phone was also switched off.
- (x) The learned Judicial Magistrate Court, after analysing the oral and documentary evidence, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for a period of three months and to pay compensation of Rs.3,00,000/- in default



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(xi) Aggrieved over the same, the accused filed an appeal before the II Additional District and Sessions Court, Erode in Crl.A.No.223 of 2019. The learned II Additional District and Sessions Court vide its order dated 28.01.2020 confirmed the conviction and sentence passed by the Trial Judge, as against which, the present revision case is filed.

4. At the outset, it may be observed that the accused did not deny her signature on the Cheque (Ex.P1). Her contention before the Trial Court was that she borrowed a sum of Rs.1,00,000/- from one Sundar and handed over six signed blank cheques to him. According to her, though she repaid the entire amount to Sundar, he did not return the cheques.

5. Mr.M.Karthik, learned counsel appearing for the revision petitioner contended that even according to the complainant, he lent a sum of Rs.3,00,000/- on 10.12.2016 by cash. During the relevant period,



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the demonetization was introduced by Government of India by which Rs.500/- and Rs.1,000/- denominations were withdrawn. His further contention is that though the complainant had stated that he pledged his wife's jewels in a bank and borrowed a sum of Rs.3,00,000/-, he did not file the receipt to show that he had pledged his wife's jewels. Thus, according to the learned counsel for the revision petitioner, the complainant has not proved his financial capacity to lend a huge amount of Rs.3,00,000/- to the accused.

6. In the instant case, as already observed the accused did not deny her signature on the cheque. Once the signature is admitted, there is a presumption under Section 118 of the Negotiable Instrument Act, unless the contrary is proved by the accused. The accused in the instant case did not issue any reply notice to the complainant, though notice was sent by the complainant to his residential address. The postal endorsement on the returned cover shows that though intimation was delivered to the accused, he did not claim the notice sent by the complainant.



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7. It is settled law that the plea of financial capacity of the complainant should be taken at the first instance and in the instant case no reply was given by the accused. It is pertinent to point out that the proof affidavit of the complainant (PW.1) was filed on 27.02.2019 and the accused cross examined PW.1 on 11.07.2019 and during the cross examination, the accused had questioned PW.1 with regard to his financial capacity. Though Government of India introduced demonetization by which Rs.500/- and Rs.1,000/- were withdrawn, the Government of India gave sufficient time to exchange 500/- and 1000/- rupee notes. The allegation that the accused handed over the cheque only to one Sundar and not to the complainant is not also proved as no legal action was initiated by the accused against Sundar. The complainant had discharged his initial burden by adducing acceptable evidence and the accused did not rebut the presumption under Section 118 and 139 of N.I. Act. Both the Courts below had analysed the evidence on record in the right perspective and therefore, I do not see any reason to interfere with the same.



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8. In the result,

- (i) The Criminal Revision Petition stands dismissed. No costs.
- (ii) The judgment dated 28.01.2020 passed by the II Additional District and Sessions Court, Erode, in C.A.No.223 of 2019 and the judgment dated 05.09.2019 passed by the learned Judicial Magistrate Court, (Fast Track Court No.I), Erode, in S.T.C.No.555 of 2017, are confirmed.
- (iii) The revision petitioner/accused shall surrender before the learned Judicial Magistrate Court, (Fast Track Court No.I), Erode, within 15 days from the date of receipt of a copy of the order, failing which, the Trial Court shall take steps to secure her presence for undergoing the sentence.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
dm



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- To
- 1.The Second Additional District and Sessions Court,
Erode District.
 - 2.The Judicial Magistrate Court,
(Fast Track Court No.I), Erode.



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R. HEMALATHA, J.

dm

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