



Crl.R.C.No.952 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.952 of 2018

N.Malathi

... Petitioner

Vs.

G.Chinnaraj

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment and conviction dated 20.07.2018 in C.A.No.80/2017 on the file of I Additional District and Sessions Judge, Coimbatore, partly confirming the judgement dated 09.03.2017 in C.C.No.48/2015 on the file of Judicial Magistrate (Fast Track Court No.1), Coimbatore.

For Petitioner : Mr.M.N.Balakrishnan

For Respondent : Notice not ready

ORDER

Challenge in this criminal revision case is made to the judgement and orders passed by the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.80/2017 partly confirming the conviction and sentence passed by the learned Judicial Magistrate (Fast Track Court No.1), Coimbatore in C.C.No.48/2015.

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

The respondent/complainant filed a private complaint before the Judicial Magistrate No.3, Coimbatore under Section 200 Cr.P.C. against the present revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.421/2013 (Ex.P1) which was subsequently transferred to Judicial Magistrate (Fast Track Court No.1) at Magisterial Level, Coimbatore and renumbered as C.C.No.754/2013. During the pendency of the said case, the matter was referred to Lok Adalat that was held on 12.04.2014 and the dispute between the parties was amicably settled on the terms and conditions mentioned in the Lok Adalat Award (Ex.P2). In view of the same the present revision petitioner agreed to pay a sum of Rs.1,65,000/- to the respondent/complainant, and she paid a sum of Rs.25,000/-. She issued a cheque bearing No.001186 dated 30.06.2014 (Ex.P3) drawn on City Union Bank Limited for liquidating the balance of Rs.1,40,000/-. When the complainant presented the said cheque on 28.07.2014 through his banker, viz., Karur Vysya Bank, R.S.Puram Branch, Coimbatore, the



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same was returned on 30.07.2014 (Ex.P4) for the reason “Account Closed”. Thereafter, the respondent/complainant issued a statutory notice dated 08.08.2014 (Ex.P5) to the present revision petitioner calling upon her to pay the amount due under the cheque within a period of 15 days. Though the revision petitioner/accused received the statutory notice on 11.08.2014 as is evidenced by the postal acknowledgement card (Ex.P6), she did not come forward to make good the payment and did not also send any reply to the notice received by her.

3. Therefore, the respondent/complainant filed a private complaint before the Judicial Magistrate (Fast Track Court No.1), Coimbatore under Section 200 Cr.P.C. against the present revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.48/2015. The learned Judicial Magistrate (Fast Track Court No.1), Coimbatore took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused/revision petitioner and on her appearance, furnished copies of records under Section 207 Cr.P.C. When



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the revision petitioner/accused was questioned with regard to the substance of the accusation made against her, she pleaded not guilty and the case was posted for trial.

4.On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P6. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, the accused denied of having committed any offence. However, the accused did not adduce any oral / documentary evidence on her side.

5.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced her as detailed hereunder.

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for a period six months and to pay a compensation of



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S.No.	<i>Offences under which convicted</i>	<i>Sentence</i>
		Rs.1,40,000/- to the complainant within two months from the date of the judgement, in default, to undergo simple imprisonment for a period of two months.

6. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A.No.80/2017 before the I Additional District and Sessions Court, Coimbatore. The learned I Additional District and Sessions Judge, Coimbatore after analysing the oral / documentary evidence adduced on both sides, partly allowed the appeal by reducing the sentence from six months to three months. The conviction of the accused under Section 138 of N.I. Act was confirmed.

7. Mr. M.N. Balakrishnan, learned counsel for the revision petitioner would contend that the cheque was issued as per the settlement between the parties in Lok Adalat in C.C.No.421/2013 and therefore, the settlement should be treated as a decree of civil court and a private



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complaint for the offence punishable under Section 138 of N.I. Act cannot be filed. In order to substantiate his contention, he relied on the decisions of *K.N.Govindan Kutty Menon Vs C.D.Shaji* reported in *(2012) 2 SCC 51* and *M.I.Ibrahim Kutty Vs Indian Overseas Bank* reported in *AIR 2005 MADRAS 335*.

8. In the Lok Adalat (in C.C.No.421/2013 on the file of the Judicial Magistrate No.3, Coimbatore), the present revision petitioner agreed to repay a sum of Rs.1,65,000/- to the respondent/complainant and paid a sum of Rs.25,000/- on 12.04.2014. For the balance amount of Rs.1,40,000/- she issued a post dated cheque bearing No.001186 dated 30.06.2014 (Ex.P3). When the complainant presented the cheque on 28.07.2014 through his banker, viz., Karur Vysya Bank, R.S.Puram Branch, Coimbatore, the same was returned on 30.07.2014 (Ex.P4) for the reason “Account Closed”. Even after receiving the statutory notice from the complainant the present revision petitioner did not make good the payment and therefore, the respondent/complainant filed a private complaint before the Judicial Magistrate (Fast Track Court No.1), Coimbatore under Section 200 Cr.P.C. against the present revision



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petitioner for the offence punishable under Section 138 of the N.I. Act in C.C.No.48/2015.

9. It is seen from the records that the revision petitioner did not deny her signature on the cheque. The only contention of her counsel is that since the Award was passed by the Lok Adalat, the respondent/complainant can only file an execution application and cannot file a private complaint under Section 200 Cr.P.C. against the present revision petitioner for the offence punishable under Section 138 of the N.I. Act. This argument of the counsel for the revision petitioner / accused cannot be accepted. In the decision in *K.N.Govindan Kutty Menon Vs C.D.Shaji (cited supra)* the question posed for consideration was that when a criminal case filed under [Section 138](#) of N.I. Act is referred to by the Magistrate Court to Lok Adalat and is settled between the parties and an Award is also passed recording the settlement, can it be considered as a decree of a civil court and thus executable. In the said decision the Hon'ble Supreme Court after discussing various decisions had laid down the following propositions in para 26 which is extracted hereunder :



WEB COPY “26. From the above discussion, the following propositions

emerge:

1) In view of the unambiguous language of [Section 21](#) of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.

2) [The Act](#) does not make out any such distinction between the reference made by a civil court and criminal court.

3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

4) Even if a matter is referred by a criminal court under [Section 138](#) of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

In the decision in *M.I.Ibrahim Kutty Vs Indian Overseas Bank* (cited supra) it has been held that under [Section 21](#) of the Act, an Award of Lok Adalat shall be deemed to be a decree of a civil court and the same shall be final and binding on all the parties and no appeal shall be against the said award.



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In both these decisions nowhere it is stated that if a cheque is dishonoured which is issued as per the terms of settlement the holder of the cheque cannot institute a case under Section 138 of N.I. Act.

10. Both the Courts below after analysing the factual aspects had concurrently held that the accused is guilty of the offence punishable under Section 138 of N.I. Act. Therefore, I do not see any reason to interfere with the same. As regards the sentence passed by the Appellate Court it is seen that the sentence was reduced from six months to three months and the same is not on the higher side.

11. In the result, this Criminal Revision Case is dismissed. The revision petitioner/accused shall surrender before the Judicial Magistrate (Fast Track Court No.1), Coimbatore, 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.

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

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To

- 1.The I Additional District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate (Fast Track Court No.1), Coimbatore.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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