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Crl.R.C.No.387 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

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

Crl.R.C.No.387 of 2019
and Crl.M.P.No.5756 of 2019

M.Vanitha

... Petitioner / Accused

Vs.

M.C.Dilip Kumar

... Respondent / Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment passed by the learned IV Additional Sessions Judge, Chennai in C.A.No.95 of 2017, dated 29.08.2018, confirming the Judgment passed by the learned Metropolitan Magistrate IV, Fast track Court, George Town, Chennai in C.C.No.417/2015, dated 17.03.2017.

For Petitioner : Mr.S.S.Jhothivani

For Respondents : Mr.I.Syed Sibghatulla,
Legal Aid Counsel



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ORDER

Challenging the Judgment and Orders, dated 29.08.2018 passed in C.A.No.95 of 2017 by the learned IV Additional Sessions Judge, Chennai, confirming the conviction and sentence passed by the Metropolitan Magistrate IV, Fast Track Court, George Town, Chennai, in C.C.No.417/2015, dated 17.03.2017, the present Criminal Revision is filed by the petitioner/Accused.

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

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

- i. The accused borrowed a sum of Rs.1,50,000/- from the complainant on 02.12.2013 promising to repay the principal together with interest @ 24% per annum. However, the accused did not pay any amount either towards interest or principal.
- ii. After much persuasion by the complainant, the accused issued a



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cheque bearing number.290304 dated 22.01.2015 (Ex.P1) drawn on Punjab National Bank, Mint Street Branch, Chennai for a sum of Rs.1,50,000/- towards part payment.

- iii. When the complainant presented the cheque for collection on 22.01.2015 through his banker viz., the State Bank of India, Mint Terminus Branch, Chennai, the same was returned on 23.01.2015 for the reason “Funds Insufficient”, as is seen from the cheque return memo (Ex.P2).
- iv. Therefore, the complainant issued a statutory notice dated 04.02.2015 (Ex.P3) to the accused calling upon the latter to pay the amount due under the cheque.
- v. Though the accused received the said statutory notice on 05.02.2015, as is evidenced by the postal acknowledgement card (Ex.P4), 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 before the Metropolitan Magistrate IV, Fast track Court, George Town, Chennai, under Section 200 Cr.P.C. against the accused for an



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offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.417/2015.

vii. The learned Metropolitan Magistrate IV, Fast Track Court, George Town, Chennai took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.

viii. On the appearance of the accused, the copies of case records were furnished to him 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 matter was posted for trial.

ix. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P4.

x. Thereafter, the accused was questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her and she denied of having committed any offence. Though she did not examine any witness, marked Ex.D1.

xi. After full trial, the learned trial court judge, vide his Judgment



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dated 17.03.2017, convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo Simple imprisonment for six months and to pay a fine of Rs.1,50,000/- within one month from the date of the order, in default, to undergo simple imprisonment for two months.

xii. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.95/2017 before the IV Additional District and Sessions Judge, Chennai.

xiii. The learned IV Additional District and Sessions Judge, Chennai after analysing the evidence on record, confirmed the findings recorded by the Trial Court Judge and dismissed the appeal, as against which the present Criminal Revision Case is filed by the accused.

4. Heard Mr.S.S.Jhothivani, learned counsel for the Revision petitioner and Mr.I.Syed Sibghatulla, learned Legal Aid Counsel for the respondent.

5. At the outset it may be observed that the accused had not



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denied her signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act, unless the contrary is proved by the accused.

6. Mr.S.S.Jhothivani, learned counsel for the revision petitioner would contend that the very same complainant during the year 2014 sent a notice of demand (Ex.D1) in which he has stated that the revision petitioner borrowed a sum of Rs.80,000/- from him. In the instant case, the complainant had mentioned that the revision petitioner borrowed a sum of Rs.1,50,000/- on 02.12.2013. However, in the private complaint, the complainant did not mention the earlier transaction between the parties. It is also argued that the revision petitioner actually handed over the cheque to one M.C.Govindaraj, who is the brother of the complainant, and the said cheque was misused by the complainant for the purpose of filing the present private complaint.



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7. Per contra, Mr.I.Syed Sibghatulla, learned Legal Aid Counsel appearing for the Respondent would contend that both the Courts below after analysing the evidence on record in proper perspective, had convicted and sentenced the accused and there is no reason for this Court to interfere with the same.

8. It is pertinent to point out that the revision petitioner did not issue any reply notice to the complainant even through she received the legal notice (Ex.P3) from the complainant. Absolutely there is nothing on record to show that the transaction mentioned in Ex.D1 and the present transaction are one and the same. In fact the cheque number mentioned in Ex.D1 is different from the Cheque number mentioned in Ex.P1. This aspect was dealt with by both the Courts below in extenso. The contention of the accused that she handed over the cheque only to M.C.Govindaraj, the brother of the complainant and not to the complainant, cannot be accepted for the simple reason that no notice was issued to M.C.Govindaraj to return the cheque. No legal proceedings were contemplated against the said M.C.Govindaraj till date for the



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reasons best known to the revision petitioner.

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9. In the circumstances, the conviction and sentence passed by both the Courts below cannot be said to be perverse and therefore, the Criminal Revision Case is liable to be dismissed as devoid of merits.

10. In the result,

- i. the Criminal Revision Case is dismissed.
- ii. the Judgment and orders dated 29.08.2018 in C.A.No.95 of 2017 passed by IV Additional Sessions Judge, Chennai and the Judgment and orders dated 17.03.2017 in C.C.No.417/2015 passed by the Metropolitan Magistrate IV, Fast track Court, George Town, Chennai, are confirmed.
- iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Metropolitan Magistrate IV, Fast track Court, George Town, Chennai, 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



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- presence of the accused to serve the remaining period of sentence;
- iv. this Court places on record its appreciation to Mr.I.Syed Sibghatulla, learned Legal Aid Counsel, for his valuable assistance in deciding this case. The Legal service Committee is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the said counsel towards his fee.
- v. Consequently, connected miscellaneous petition is closed.

12.04.2024

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

To

- 1.The IV Additional Sessions Judge, Chennai.
- 2.The Metropolitan Magistrate IV,
Fast track Court, George Town,
Chennai.

R. HEMALATHA, J.



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