



Crl.R.C.No.955 of 2020
and Crl.M.P.No.7708 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.955 of 2020
and Crl.M.P.No.7708 of 2024

S.Gayathiri

... Petitioner

Vs.

1.V.R.Selvarajulu

2.The State rep by
Public Prosecutor,
Coimbatore.

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 Criminal Procedure Code to set aside the judgment dated 25.02.2020 passed by the V Additional District and Sessions Judge, Coimbatore in Crl.A.No.275/2017 dismissing the appeal and confirming the judgment dated 23.08.2017 in C.C.No.303/2015 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore.

For Petitioner : Mr.M.Rajkumar

For R1 : Mr.B.Mohan

For R2 : Mr.S.Rajakumar

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ORDER

The revision petitioner is the accused in C.C.No.303/2015 on the file of the Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore. The first respondent/complainant filed a private complaint under Section 200 Cr.P.C., against the revision petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present criminal revision would also be indicated.

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

3.1 The accused, who runs a real estate business in and around Coimbatore, approached the complainant through one Parimala and obtained a hand loan of Rs.18,00,000/- from the complainant on 12.04.2012, promising to repay the said amount together with interest at the rate of 18% per annum and executed a promissory note (Ex.P1) on

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the same day. The accused also promised to repay the amount within a period of three months. The accused did not keep up his promise and after much persuasion by the complainant, she handed over a cheque dated 05.07.2012, bearing No.682105 (Ex.P4), drawn on Canara Bank, Gandhipuram Branch for a sum of Rs.18,00,000/-. She also requested the complainant to present the cheque during the first week of August 2012. Accordingly, the complainant presented the cheque for collection through his bankers viz., Indian Bank, Coimbatore Branch on 01.08.2012 and the same was returned for the reason "Funds Insufficient" vide cheque return memo (Ex.P5), dated 03.08.2012. At the request of the accused, the cheque was once again presented for collection on 01.10.2012 and this time also, the cheque was dishonoured as per return memo (Ex.P6) dated 03.10.2012. Thereafter, the accused transferred a sum of Rs.49,000/- to the account of the complainant on 04.10.2012 and did not pay the balance amount. Therefore, the complainant issued a legal notice (Ex.P8) dated 31.10.2012, calling upon the accused to pay the amount due under the cheque (Ex.P4) within a period of fifteen days from the date of receipt of the notice. The accused received the said



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notice and sent a reply (Ex.P10), dated 21.11.2012 which according to the complainant contained false allegations. Thereafter, the complainant sent a Rejoinder (Ex.P11), dated 05.12.2012 for which the accused did not send any reply notice. Since a mistake had crept in, in the legal notice (Ex.P8) while mentioning the date of loan amount, another legal notice (Ex.P14) dated 17.12.2012 was sent to the accused altering the date of borrowal.

3.2 Since no amount was forthcoming, the complainant filed a private complaint under Section 200 Cr.P.C., against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) before the Judicial Magistrate-II, Fast Track Court, Coimbatore in C.C.No.222/2013 (Subsequently, transferred to the file of the Fast Track Court at Magisterial Level-II and re-numbered as C.C.No.56/2014).

3.3 The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act)



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and issued summons to the accused and on her appearance, furnished copies of records under Section 207 Cr.P.C. When the respondent/accused was questioned with regard to the substance of accusation made against her, she pleaded not guilty and the case was therefore posted for trial.

3.4 The complainant examined himself as PW.1 and one another witness as PW.2 and marked Ex.P1 to Ex.P18. The accused, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, denied of having committed any offence. The accused examined herself and two other witnesses and marked Ex.D1 to Ex.D6.

3.5 The learned Trial Court Judge, after analysing the oral and documentary evidence on record, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for a period of one year and to pay compensation of Rs.18,00,000/- together with interest at the



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rate of 6% per annum from the date of cheque, within a period of one month, in default, to undergo simple imprisonment for a period of six months, vide his Judgment and orders dated 23.08.2017.

3.6. Aggrieved over the same, the accused filed an appeal in Crl.A.No.275/2017 before the V Additional District and Sessions Court, Coimbatore. The learned Sessions Judge after analysing the evidence on record, dismissed the appeal and confirmed the conviction and sentence passed by the Trial Court, vide his Judgment and orders dated 25.02.2020 as against which, the present Criminal Revision is filed by the accused.

3.7. Heard Mr.M.Rajkumar, learned counsel appearing for the revision petitioner, Mr.B.Mohan, learned counsel appearing for the first respondent and Mr.S.Rajakumar, learned counsel appearing for the second respondent.



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4. At the outset, it may be observed that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C. cannot act as a second appellate court unless it is convincingly shown that the conviction and sentence passed by both the Courts below are perverse.

5. It is pertinent to point out the accused, in the instant case, had not disputed his signature on the cheque (Ex.P4). Once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved by the accused.

6. The accused, in her reply notice as well as in her deposition had taken a stand that she does not know the complainant. However, the accused had filed a Writ Petition in W.P.No.32281/2012 before this Court against the police officials as well as the present complainant under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the police officials to not threaten and harass her on the basis of the complaint given by the present complainant. In the said Writ Petition, the accused had admitted that she issued 8 cheques bearing



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numbers 682101, 682103 to 682109 to the complainant. Therefore, it can be inferred that the complainant is already known to the accused.

7. Mr.M.Rajkumar, learned counsel appearing for the revision petitioner/accused raised the following grounds to show that the accused had rebutted the presumption under Section 138 of the Negotiable Instruments Act.

(1) The complainant is a Bank employee and therefore, he could not have lent a sum of Rs.18,00,000/- to the accused.

(2) The complainant did not file Income-Tax returns to show that he actually lent a sum of Rs.18,00,000/- to the accused.

(3) The complainant had already lodged a police complaint against the present accused for the offences punishable under Sections 406 and 420 IPC with regard to the very same cause of action and therefore, the private complaint under Section 200 Cr.P.C against the accused under Section 138 of the Negotiable Instruments Act cannot be maintained.



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Point No.1 & 2:-

The fact that the complainant is a Bank employee, cannot a ground to conclude that he could not have lent a sum of Rs.18,00,000/- to the accused, especially, when the accused had executed a Promissory Note (Ex.P1), dated 12.04.2009 for a sum of Rs.18,00,000/- and handed over the cheque (Ex.P4) dated 05.07.2012. She did not deny her signatures both in Ex.P1 and Ex.P4 and in the circumstances the Income Tax returns is not a necessary document.

Point No.3 :

A perusal of FIR (Ex.P16) shows that one Parimala had preferred a criminal complaint against the accused for the offences punishable under Sections 406, 420 IPC in which, the said Parimala had stated that, she and the present complainant were cheated by the accused. The present complainant had not preferred any complaint on the basis of the cheques issued by the accused. Therefore, the doctrine of double jeopardy would not apply to the present case. In fact, both the courts



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below had analysed this aspect in extenso and by their well reasoned orders had found the accused guilty of the offences punishable under Section 138 of the Negotiable Instruments Act. By no stretch of imagination, the same can be termed as perverse. In the circumstances, I do not see any reason to interfere with the concurrent findings recorded by both the Courts below.

8. In the result, this Criminal Revision Case is dismissed. No costs. Consequently, the connected miscellaneous petition also stands dismissed.

i The judgment dated 25.02.2020 passed in Crl.A.No.275/2017 by the V Additional District and Sessions Judge, Coimbatore and the judgment dated 23.08.2017 passed in C.C.No.303/2015 by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, are hereby confirmed.

ii The revision petitioner/accused shall surrender before the Judicial Magistrate, Fast Track Court at Magisterial Level-II,



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Coimbatore, 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 steps to secure his presence for serving the remaining period of sentence.

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

To

- 1.The V Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level-II,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.,

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