



Crl.R.C.No.973 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

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

Crl.R.C.No.973 of 2020
and
Crl.M.P.No.6795 of 2020

LATHA

... Petitioner

vs.

1.T.Durairaj

2.State by The Public Prosecutor,
District Sessions Court,
Nagapattinam.

... Respondents

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the judgment and orders dated 29.01.2020 in C.A.No.3 of 2016 on the file of the Additional District and Sessions Court, Mayiladuthurai confirming the judgment and orders dated 31.03.2016 in C.C.No.03 of 2014 on the file of the Judicial Magistrate, (Fast Track Court), Mayiladuthurai.



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For Petitioner : M/s.T.Dharani

For R1 : Mr.B.Jawahar

For R2 : Mr.S.Rajakumar
Additional Public Prosecutor
Assisted by Ms.A.Shahana Fathima
Government Advocate (Criminal Side)

ORDER

The present Criminal Revision case is filed against the judgment dated 29.01.2020 passed by the Additional District and Sessions Court, Mayiladuthurai in C.A.No.3 of 2016 confirming the judgment dated 31.03.2016 passed by the learned Judicial Fast Track Magistrate Court, Mayiladuthurai in C.C.No.03 of 2014.

2. For the sake of convenience, the revision petitioner/accused is referred to as accused and the 1st respondent/complainant is referred to as complainant.



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3. The case of the 1st respondent/complainant in a nutshell is as follows:-

- (i) The husband of the accused borrowed a sum of Rs.6,00,000/- from the complainant on 06.11.2013 and in order to liquidate the said amount, the accused issued a Cheque bearing No.623543 (Ex.P1), dated 06.11.2013 for a sum of Rs.6,00,000/- drawn on Indian Bank, Kali Branch.
- (ii) When the cheque was presented by the complainant for collection on 07.11.2013 through his bankers viz., I.N.G Vysya Bank, Mayiladuthurai Branch, the same was returned on 07.11.2013 for the reason 'funds insufficient', as is seen from the Return Memo (Ex.P2). Thereafter, the complainant issued a legal notice to the accused on 22.11.2023 (Ex.P3) demanding the latter to pay the amount due under the Cheque within 15 days from the date of receipt of the legal notice.
- (iii) According to the complainant, though the said notice was received by the accused on 25.11.2013 as is evidenced by the postal



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acknowledgement card (Ex.P4), she did not come forward to make the good payment and did not also send any reply.

(iv) Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., against the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.3/2014 before the Judicial Magistrate, (Fast Track Court), Mayiladuthurai.

(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 of Criminal Procedure Code. When the accused was questioned with regard to substance of accusation made against her, she pleaded not guilty. Therefore, the case was posted for trial.

(vi) The complainant examined himself and three other witnesses and marked Ex.P1 to Ex.P6.



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- (vii) When the accused was questioned with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence.
- (viii) Though she did not examine herself, she marked two documents as Ex.D1 and Ex.D2.
- (ix) The learned Judicial Magistrate after analysing the oral and documentary evidence on record, vide his judgment dated 31.03.2016 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 four months and to pay a compensation of Rs.6,00,000/- to the complainant in default, to undergo simple imprisonment for a further period of one month.
- (x) Aggrieved over the same, the accused filed an appeal before the Additional District and Sessions Court, Mayiladuthurai in Crl.A.No.3 of 2016.
- (xi) The learned Sessions Judge, Mayiladuthurai, after analysing the oral and documentary evidence on record, confirmed the



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conviction and sentence passed by the Trial Court. As against which, the present Criminal 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). Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881, unless the contrary is proved by the accused.

5. Ms.T.Dharani, learned counsel appearing for the revision petitioner/accused contended that there was an agreement of sale dated 09.02.2009 between the complainant and the husband of the accused for which the present cheque (Ex.P1) was handed over by the accused as a security. According to her, both the Courts below had not considered this aspect and convicted and sentenced the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

6. Per contra, Mr.B.Jawahar, learned counsel appearing for the 1st respondent/complainant contended that both the Courts below after



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appreciating the oral and documentary evidence adduced on both sides, had rightly come to conclusion that the accused had committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and there is no reason for this Court to interfere with the same.

7. It is pertinent to point out that this Court while hearing the revision under Section 397 of Criminal Procedure Code cannot act as Second Appellate Court. This is a case where both the Courts below had rendered a finding based on evidence. The accused had filed a copy of the Sale Agreement dated 09.02.2009 (Ex.D1) between her husband and the complainant. According to her, in order to pay the sale consideration, the cheque (Ex.P1) was issued as a security. However, on 28.12.2010, the said Sale Agreement was cancelled between the parties. In the circumstances, it is not known as to why, the present revision petitioner/accused did not send any notice to the complainant to get back her cheque. She did not also initiate any action against the complainant. If really the accused had handed over the cheque only as a security for the Sale Agreement (Ex.D1) which was subsequently cancelled the

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accused would not have kept quiet. The Sale Agreement was infact cancelled way back in the year 2010 and the present private complaint was filed in the year 2014.

8. The allegations of the accused appears to have been invented for the purpose of defending the case. Both the Courts below after appreciating the oral and documentary evidence had come to conclusion that the accused is guilty of the offence punishable under Section 138 of Negotiable Instruments Act and I do not find any reason to interfere with the same. The sentence passed by the Appellate Court does not seem to be disproportionate to the offence committed by the accused.

9. In the result,

(i) The Criminal Revision Petition stands dismissed. No costs.

Consequently, the connected criminal miscellaneous petition is closed.

(ii) The judgment dated 29.01.2020 passed by the Additional District and Sessions Court, Mayiladuthurai, in C.A.No.3 of 2016 and the



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WEB COPY judgment dated 31.03.2016 passed by the learned Judicial Fast Track Magistrate Court, Mayiladuthurai, in C.C.No.03 of 2014, are confirmed.

(iii) The revision petitioner/accused shall surrender before the learned Judicial Fast Track Magistrate Court, Mayiladuthurai, 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.

04.04.2024

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

To

- 1.The Addl. District and Sessions Court, Mayiladuthurai.
- 2.The Judicial Fast Track Magistrate Court, Mayiladuthurai.
- 3.The Public Prosecutor,
District Sessions Court, Nagapattinam.

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R. HEMALATHA, J.

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