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Crl.R.C.Nos.1070 and 1071 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

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

Crl.R.C.Nos.1070 and 1071 of 2020
and Crl.M.P.No.7425 of 2020

Anuradha Jose Thomas

... Petitioner in both Crl.R.Cs

Vs.

K.Selvam

... Respondents in both Crl.R.Cs

Prayer in Crl.R.C.No.1070 of 2020: Criminal Revision Case filed under Section 397 r/w. 401 of Code of Criminal Procedure, to set aside the orders, dated 20.09.2020 passed in C.M.P.142 of 2018 in C.A.No.236 of 2017 by the learned IV Additional District and Sessions Judge, Coimbatore.

Prayer Crl.R.C.No.1071 of 2020: Criminal Revision Case filed under Section 397 r/w. 401 of code of Criminal Procedure, to set aside the Judgment and orders, dated 02.09.2020 passed in C.A.No.236 of 2017 by the learned IV Additional District and Sessions Judge, Coimbatore confirming the Judgment and orders, dated 18.07.2017 passed in S.T.C.No.1873 of 2013, by the learned Judicial Magistrate No.II, Pollachi, Coimbatore.

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In both Crl.R.Cs

For Petitioner : Mr.C.Ponnambala Thiyagarajan

For Respondent : Mr.L.Mouli

COMMON ORDER

The Criminal Revision Cases are filed by the Revision petitioner / accused challenging the Judgment and orders, dated 02.09.2020 passed in C.A.No.236 of 2017 and CMP.142/2018 in C.A.No.236/2017 by the learned IV Additional District and Sessions Judge, Coimbatore.

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 petitioner/accused borrowed a sum of Rs.2,50,000/- as hand loan on 02.08.2012 from the respondent / complainant to meet her urgent family expenses. She also promised to repay the same



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within a period of six months.

- ii. The complainant on 10.02.2013 demanded the accused to repay the amount and the accused requested him to grant five months time to repay the loan amount. After much persuasion, she handed over a post dated Cheque bearing number.560069, dated 25.07.2013 (Ex.P1) drawn on UCO Bank, Pollachi Branch for Rs.2,50,000/-.
- iii. When the cheque was presented for collection on 27.07.2013 by the complainant through his banker viz., Dhanalakshmi Bank, Pollachi branch, the same was returned on 30.07.2013 as 'Account closed', as is seen from the Cheque return memo (Ex.P2).
- iv. Thereafter, the complainant issued a legal notice, dated 27.08.2013 (Ex.P3) to the accused, demanding the latter to pay the amount due under the Cheque within fifteen days from the date of receipt of the notice.
- v. The accused though received the said notice on 04.09.2013, as is evidenced by the postal acknowledgment card (Ex.P4), she did not come forward to make good the payment and she did not also send



any reply notice.

- vi. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.1873/2013 before the Judicial Magistrate No.II, Pollachi.
- vii. The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, copies of case records were furnished to her 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 case was posted for trial.
- viii. In order to bring home the guilt of the accused, the complainant examined himself as P.W1 and marked Ex.P1 to Ex.P5.
- ix. Thereafter, the accused was questioned under Section 313 (i) (b) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her. She denied of having committed any offence. The accused examined herself as D.W.1 and one Giridharan as D.W.2 and marked Ex.D1.



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- x. After full contest, the learned trial Court Judge, vide his Judgment dated 18.07.2017, convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced her to undergo Simple Imprisonment for a period of one year and to pay a sum of Rs.2,50,000/- towards compensation within a period of three months from the date of the order, in default, to undergo Simple Imprisonment for a period of three months.
- xi. Aggrieved over the same, the petitioner / accused filed C.A.No.236/2017 before the IV Additional District and Sessions Court, Coimbatore. The accused also filed an application before the appellate Court in CMP 142/2018, seeking permission to examine another witness on her side.
- xii. The learned IV Additional District and Sessions Judge, Coimbatore, vide his Judgment dated 02.09.2020, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. He also dismissed the application in C.M.P.142/2018. Aggrieved over the same, the present Criminal Revision cases are



filed by the accused.

4. At the outset, it may be observed that the accused did not deny her signature on the cheque, dated 25.07.2013 (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act, unless the contrary is proved by the accused.

5. Mr.C.Ponnambala Thiyagarajan, learned counsel for the revision petitioner/accused contended that the husband of the accused had a business transaction with the complainant and during the course of the said transaction, the Cheque (Ex.P1) was handed over to him as a security. It is also his contention that since the complainant supplied substandard goods, the petitioner's husband refused to receive the same. According to him, the accused and her husband requested the complainant to hand over the cheque given by them as security and though the complainant also promised to return the same, did not keep up his promise. It is also his contention that the accused did not receive the notice Ex.P3 and the signature found on the postal acknowledgment card



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is not her signature.

6. The learned counsel for the petitioner relied on the decision of this Court in ***Kalavally Vrs. Parthasarathy*** reported in ***2009 (1) MWN (Cr.) DCC/February*** and contended that no prudent man would give a huge amount of Rs,2,50,000/- as hand loan without procuring sufficient security and in the instant case, since the complainant admitted that he got only a cheque from the accused evidencing payment of Rs.2,50,000/- as hand loan, it has to be held that the complainant has not established his case. In the circumstances, it has to be construed that the accused had rebutted the initial presumption under Section 118 of the Negotiable Instruments Act, in his contention.

7. Per contra, Mr.L.Mouli, learned counsel appearing for the respondent contended that both the Courts below have properly appreciated the evidence and there is no reason for this Court to interfere with the same.

8. The conviction and sentence passed by both the Courts



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below cannot be assailed for the following reasons:

- i. The accused had not disputed her signature on the cheque (Ex.P1).
- ii. There is absolutely no evidence to show that there was a business transaction between the complainant and the accused's husband and the complainant delivered substandard quality of goods. An attempt was made before the appellate Court to prove this by way of filing an application in CMP.142/2018 in C.A.No.236 of 2017 under Section 238 of Cr.P.C. This petition was to examine a witness who according to the accused was present at the time of rejection of goods by her husband. The said petition was dismissed along with the Criminal Appeal in Crl.A.No.236/2017 by the appellate Court.
- iii. The accused did not adduce any evidence to show that the cheque was issued only for security purpose.
- iv. Though it is claimed that the accused was a Ward Counsellor and she used to frequent the Police Stations to resolve disputes between the villagers, it is not known as to why she did not lodge any complaint with the Police against the complainant for not



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returning the cheque which was given only as security.

- v. Surprisingly, it is seen from the letter dated 17.07.2013 issued by the accused to the Manager UCO bank, Pollachi branch that the accused had informed the bank that she lost the cheque bearing number.560069 (Ex.P1). She had also requested the bank to stop the payment of the cheque. Subsequently, she had closed the account itself on 29.07.2013.
- vi. Thus, the accused is not clear as to her actual contention and has contradicted her own statement.

9. In the result,

- i. the Criminal Revision Cases are dismissed;
- i. the Judgment and order passed by IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.236 of 2017 and C.M.P.142/2018, dated 02.09.2020 are hereby confirmed;
- ii. The accused is directed to surrender before the trial Court viz., the Judicial Magistrate Court No.II, Pollachi, within fifteen days from the date of receipt of a copy of this order / uploading of the order,



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failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

Consequently, connected miscellaneous petition is closed.

04.04.2024

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

To

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate Court No.II,
Pollachi.



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