



Crl.R.C.No.727 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

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

Crl.R.C.No.727 of 2019
and Crl.M.P.Nos.10104, 10105 and 10107 of 2019

R.Anandhi

... Petitioner

vs.

1.N.Natrajan

2.State Represented by
Public Prosecutor,
Coimbatore.

... Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, praying to set aside the judgement and orders dated 06.12.2018 passed in C.A.No.178 of 2016 by the IV Additional District and Sessions Court, Coimbatore confirming the judgment and orders dated 14.11.2016 passed in C.C.No.42 of 2012 by the District Munsif cum Judicial Magistrate Court, Mettupalayam.

For Petitioner : Mr.K.V.Shanmuganathan

For R1 : No Appearance

R2 : not a necessary party



Crl.R.C.No.727 of 2019

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ORDER

Challenging the judgment and orders passed by the IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.178 of 2016, the present Criminal Revision case is filed by the accused.

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

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

- (i) The accused borrowed a sum of Rs.7,00,000/- from the complainant on 01.10.2010 and executed a Promissory Note (Ex.P1) promising to repay the principal together with interest at the rate of 18% per annum on demand by the complainant or to his order.
- (ii) According to the complainant, the accused did not repay any amount either towards principal or interest and after much persuasion, on 01.11.2011, she handed over a Cheque (Ex.P2) bearing No.892261 for a sum of Rs.5,00,000/- drawn on State Bank of India,



CrI.R.C.No.727 of 2019

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- (iii) When the cheque was presented by the complainant for collection on 12.11.2011 through his bankers viz., Indian Overseas Bank, Mettupalayam Branch, Coimbatore, the same was returned on 27.11.2011 for the reasons (i) 'funds insufficient', (ii) drawer's signature differs, as is seen from the cheque return memo (Ex.P4).
- (iv) Thereafter, the complainant issued a legal notice dated 14.12.2011 (Ex.P6) to the accused demanding the latter to pay the amount due under the Cheque (Ex.P2) within 15 days from the date of receipt of the notice.
- (v) According to the complainant, though the said notice was received by the accused on 15.12.2011, as is evidenced by the postal acknowledgement card (Ex.P7), the accused did not come forward to make good the payment and did not also send any reply.
- (vi) Therefore, the complainant filed a private complaint under Section 200 Criminal Procedure Code before the District Munsif cum Judicial Magistrate Court, Mettupalayam against the accused/revision petitioner in C.C.No.42 of 2012 for the offence



Crl.R.C.No.727 of 2019

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(vii) The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C. On appearance of the accused, the Judicial Magistrate furnished copies of the records under Section 207 Criminal Procedure Code. When the accused was questioned with regard to the substance of accusation made against her, she pleaded not guilty. Therefore, the case was posted for trial.

(viii) The complainant examined himself as PW.1 and marked as Ex.P1 to Ex.P7.

(ix) Thereafter, the accused was questioned with regard to the incriminating circumstances appearing in evidence against her under Section 313(1)(b) of Criminal Procedure Code. The accused denied of having committed any offence. However, she did not examine any witnesses on her side.

(x) The Judicial Magistrate, Mettupalayam, after analysing oral and documentary evidence on record, convicted the accused for an offence punishable under Section 138 of Negotiable Instruments Act



CrI.R.C.No.727 of 2019

WEB COPY and sentenced her to undergo simple imprisonment for a period of one year and to pay a sum of Rs.7,00,000/- towards compensation in default, to undergo simple imprisonment for a further period of three months vide his judgment dated 14.11.2016

(xi) Aggrieved over the same, the accused filed an appeal before the IV Additional District and Sessions Judge, Coimbatore in C.A.No.178 of 2016. The learned Sessions Judge, after analysing the evidence on record confirmed the conviction passed by the Trial Court. However, the sentence was modified as under:-

“the accused shall undergo Simple Imprisonment for a period of six months and to pay compensation of Rs.5,00,000/- in default, to undergo simple imprisonment for a period of two months.”

Aggrieved over which, the present Criminal Revision case is filed by the accused.

4. Mr.K.V.Shanmuganathan, learned counsel appearing for the revision petitioner/accused contended that the complainant did not have



CrI.R.C.No.727 of 2019

WEB COPY

financial capacity to lend a huge sum of Rs.7,00,000/- to the accused and this aspect was not considered by both the Courts below. It is also his contention that there was a transaction between the complainant's wife and the accused during which period the accused handed over a signed blank cheque to the complainant for a sum of Rs.30,000/- as a security. According to him, though the amount was repaid by the accused to the complainant, the complainant did not return the signed blank cheque and the present case is filed misusing the said cheque.

5. His next contention is that in the pro-note (Ex.P1), though the address of complainant is indicated as 'D.No.56/5, Teachers Colony, Rangaraj Layout, Mettupalayam, the complainant during the course of cross examination admitted that he shifted to the above address only during 2012 and therefore, the pro-note (Ex.P1) could not have been executed by the accused on 01.11.2010. According to him, the complainant knew the financial position of the accused also and therefore, he would not have lent a sum of Rs.7,00,000/- to the accused.



CrI.R.C.No.727 of 2019

WEB COPY

6. At the outset, it may be observed that the accused did not deny her signature on the Cheque (Ex.P2). 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. In the instant case, the accused did not issue any reply notice to the statutory notice issued by the complainant, even though she received statutory notice dated 14.12.2011 (Ex.P6).

7. This Court while hearing the revision case cannot act as Second Appellate Court. It should be shown that the conviction and sentence passed by both the Courts below are perverse for this Court to interfere.

8. The arguments advanced by the learned counsel for the revision petitioner and the answers;

- (i) the complainant did not have financial capacity to lend a huge sum of Rs.7,00,000/- to the accused;

Answer: It is pertinent to point out that the accused did not take this



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plea at the first instance by issuing a reply notice. It is seen from the records that the complainant filed his proof affidavit before the Trial Court on 03.08.2012 and he was cross examined by the accused only on 15.03.2013. In the meanwhile, the accused was questioned with regard to the incriminating circumstances appearing in evidence against her under Section 313(1)(b) of Criminal Procedure Code and the answers given by the accused under Section 313(1)(b) of Cr.P.C., were of simple denial. At the fag end of trial, the accused had cross examined PW.1 and had questioned his financial capacity. Therefore, we cannot expect the complainant to prove his financial capacity at that stage. In any event the complainant's evidence coupled with the cheque proves that he lent a sum of Rs.7,00,000/- to the accused.

- (ii) There was a money transaction between the complainant's wife and accused during the year 2009 and a signed blank cheque was handed over to the complainant's wife. Though the entire amount was repaid, she did not return the cheque and subsequently, the



CrI.R.C.No.727 of 2019

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Answer:, Though it is contended that the Cheque (Ex.P2) was given during 2009 to the complainant's wife, the accused did not adduce any acceptable evidence to prove the same. It is not known as to why she did not issue any notice to her to return the signed blank cheque issued by her to the complainant's wife. If really, the accused had repaid the amount borrowed by her from the complainant's wife during 2009, she would not have kept quiet and till date, no action has been initiated against her. Hence, the above contentions of the learned counsel for the revision petitioner/accused cannot be accepted.

(iii) In the promissory note, the address of the complainant is mentioned as 'D.No.56/6, Teachers Colony, Rangaraj Layout, Mettupalayam and during the course of cross examination, the complainant admitted that he was not residing in the above address and therefore, Ex.P1-Promissory Note was not true and valid.



CrI.R.C.No.727 of 2019

WEB COPY

Answer: It is true that PW.1 during the course of cross examination admitted that during 2010, he was residing in a different address and shifted to Teachers Colony only during 2012. The accused had not disputed her signature on the promissory note (Ex.P1) and there is a presumption under Section 118 of Negotiable Instruments Act, 1881 in favour of the complainant. Even assuming that the contention of the accused that the promissory note was subsequently filled up by the complainant, is true, it is relevant to point out Section 20 of Negotiable Instruments Act, 1881, which reads as under:-

“20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person



CrI.R.C.No.727 of 2019

WEB COPY

so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

As already observed that the accused had not issued any reply notice with regard to these aspects and therefore, the plea raised by her in this regard cannot be accepted.

9. Both the Courts below after appreciating the oral and documentary evidence in the right perspective had come to the conclusion that the accused is guilty of offence punishable under Section 138 of Negotiable Instruments Act and by no stretch of imagination, the same can be said to be perverse.

10. Mr.K.V.Shanmuganathan, learned counsel appearing for the revision petitioner contended that the revision petitioner is now aged



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about 76 years and she is suffering from several ailments due to her old age. Therefore, he prayed for reduction of sentence.

11. Considering the age of the revision petitioner, the sentence is modified as under:-

“The accused shall undergo simple imprisonment for a period of three months and to pay a sum Rs.5,00,000/- towards compensation to the complainant in default, to undergo simple imprisonment for a further period of one month.”

12. In the result:-

- (i) The conviction passed by both the Courts below hereby confirmed.
- (ii) The revision petitioner/accused is sentenced to undergo simple imprisonment for a period of three months and to pay a sum of Rs.5,00,000/- towards compensation to the complainant in default, to undergo simple imprisonment for a further period of one month.



CrI.R.C.No.727 of 2019

WEB COPY

(iii) The accused shall surrender before the District Munsif cum Judicial Magistrate Court, Mettupalayam within a period of 15 days to serve the remaining period of sentence, failing which, the Trial Court shall take appropriate action to secure her presence for undergoing the sentence.

13. The Criminal Revision case is partly allowed with the above modifications. No costs. Consequently, the connected criminal miscellaneous petitions are closed.

08.04.2024

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

To

- 1.The IV Additional District and Sessions Court,
Coimbatore.
- 2.The District Munsif cum Judicial Magistrate Court,
Mettupalayam.



CrI.R.C.No.727 of 2019

WEB COPY
3. The Public Prosecutor,
Coimbatore.



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Crl.R.C.No.727 of 2019

R. HEMALATHA, J.

dm

Crl.R.C.No.727 of 2019

08.04.2024