



Crl.R.C.No.1198 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

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

Crl.R.C.No.1198 of 2020

Subburathinam

... Petitioner

vs.

A.Govindaraju

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the orders passed in C.A.No.332 of 2017 dated 25.06.2020 on the file of III Additional District and Sessions Court, Coimbatore confirming the judgment and orders passed in C.C.No.150 of 2016 by the learned Judicial Magistrate, FTC-I, (Magisterial Level), Coimbatore dated 18.09.2017.

For Petitioner : Ms.V.Bhavani
for M/s.H.Rajasekar

For Respondent : Mr.A.Ramaswamy
for M/s.K.Balasubramaniam

ORDER



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Challenging the conviction and sentence passed by the III Additional District and Sessions Judge, Coimbatore in C.A.No.332 of 2017, dated 25.06.2020, confirming the conviction and sentence passed by the learned Judicial Magistrate, FTC-I, (Magisterial Level), Coimbatore in C.C.No.150 of 2016, dated 18.09.2017, 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 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:

The revision petitioner/accused is known to the complainant and on 20.07.2015, the accused borrowed a sum of Rs.1,25,000/- from the respondent/complainant to meet her urgent family expenses. In order to discharge the said amount, the accused issued a cheque (Ex.P1) bearing number 245190, dated 28.09.2015 drawn on Canara Bank,



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Ondipudhur Branch, Coimbatore, for a sum of Rs.1,25,000/- to the respondent/complainant. When the cheque was presented by the complainant for collection on 28.09.2015 through his bankers, viz., Indian Overseas Bank, Singanallur Branch, Coimbatore, the same was returned unpaid on 29.09.2015 for the reason "Payment stopped by drawer", as is seen from the cheque return memo (Ex.P2). Thereafter, the respondent/complainant issued a statutory notice dated 06.10.2015 (Ex.P3) through his counsel to the revision petitioner/accused calling upon the latter to pay the amount due under the Cheque (Ex.P1) within a period of 15 days from the date of receipt of the notice. According to the complainant, though the accused received the said notice on 08.10.2015, as is evidenced by the postal acknowledgement card (Ex.P4), the accused did not send any reply notice and did not also come forward to make good the payment due under the cheque.

4. Therefore, the complainant filed a private complaint under Section 200 Criminal Procedure Code before the Judicial Magistrate, FTC-I, (Magisterial Level), Coimbatore in C.C.No.150 of 2016 against



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the revision petitioner/accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused/revision petitioner under Section 204 Cr.P.C. On appearance of the accused, the Judicial Magistrate furnished copies of the records to her under Section 207 Criminal Procedure Code. When the revision petitioner/accused was questioned with regard to the substance of accusation made against her, she pleaded not guilty. Therefore, the case was posted for trial.

5. On the side of the complainant, the complainant examined himself as PW.1 and marked Ex.P1 to Ex.P4. When the accused was questioned under Section 313 (1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence. However, she did not examine any witness on her side.

6. The learned Judicial Magistrate, FTC-I, (Magisterial Level),



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Coimbatore, after analysing the oral and documentary evidence on record, vide her judgement dated 18.09.2017 convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for a period of six months and to pay a sum of Rs.1,25,000/- to the complainant towards compensation under Section 357 (3) of Cr.P.C., within a period of two months from the date of the judgment, in default, to undergo simple imprisonment for a period of two months.

7. Aggrieved over the conviction and sentence passed by the learned Judicial Magistrate, the revision petitioner/accused filed an appeal in C.A.No.332 of 2017 before the III Additional District and Sessions Court, Coimbatore. The learned III Additional District and Sessions Judge, after analysing the oral and documentary evidence on record, confirmed the conviction and sentence passed by the trial court, vide his judgement and orders dated 25.06.2020, aggrieved over which, the present criminal revision case is filed.

8. Heard Ms.V.Bhavani, learned counsel appearing for the



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revision petitioner/accused and Mr.A.Ramaswamy, learned counsel appearing for the respondent/complainant.

9. The learned counsel appearing for the revision petitioner/accused would contend that both the Courts below have not given sufficient opportunity to the revision petitioner to cross examine the witness. Hence, she prayed to set aside the judgment and orders passed by the Courts below.

10. Per contra, Mr.A.Ramaswamy, learned counsel appearing for the respondent/complainant contended that both the Courts below had properly analysed the oral and documentary evidence and had rightly come to the conclusion that the accused committed the offence under Section 138 of the Negotiable Instruments Act. According to him, there is no reason for this Court to interfere with the same.

11. At the outset, it may be observed that the accused admitted



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her signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved.

12. In the instant case, the accused did not cross examine the complainant (P.W.1) and therefore, the evidence of P.W.1 remains un rebutted. It is also seen from the records that though the accused was given sufficient opportunity to cross examine P.W.1, she did not avail those opportunities. In fact the Appellate Court in Paragraph No.11 of his judgment had made the following observation:-

“11. Regarding the dispute as to whether sufficient opportunity was given to the accused to cross examine Pw1 and to adduce evidence on her side, the proceeding before the trial court has been extracted by the complainant in her written arguments and the same is extracted hereunder.

<i>S.No.</i>	<i>Date</i>	<i>Description</i>
<i>1.</i>	<i>02.11.2015</i>	<i>Date of filing</i>
<i>2.</i>	<i>20.11.2015</i>	<i>Sworn statement recorded.</i>
<i>3.</i>	<i>07.01.2016</i>	<i>Private Notice sent to the accused</i>
<i>4.</i>	<i>08.03.2016</i>	<i>Case transferred to FTM 1 from JM3.</i>
<i>5.</i>	<i>21.04.2016</i>	<i>Trial commenced proof affidavit in chief filed and documents marked</i>



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| 6. | 10.06.2016 | <i>Posted for Cross of Pw1.</i> |
| 7. | 10.08.2016 | <i>Pw1 cross not commenced hence Pw's closed.</i> |
| 8. | 22.08.2016 | <i>Posted for 313 questioning. Adjourned to 26.08.2016.</i> |
| 9. | 26.08.2016 | <i>Advocate Mr. M. Maheswaran filed memo of appearance for accused/appellant.</i> |
| 10. | 16.09.2016 | <i>313 questioning over.</i> |
| 11. | 17.10.2016 | <i>Posted for defence witness.</i> |
| 12. | 18.11.2016 | <i>Posted for defence witness. 311 petition filed and allowed on the same date with cost of Rs.500/-. Adjourned to 22.12.2016 for cross.</i> |
| 13. | 21.12.2016 | <i>Cost paid but not cross examined the respondent/complainant.</i> |
| 14. | 11.07.2017 | <i>In between seven hearings on 17.02.2017, 21.04.2017, 11.05.2017, 26.05.2017, 29.05.2017, 17.06.2017, 11.07.2017 the appellant/accused did not prefer to cross examine the respondent/complainant. Adjourned to 26.07.2017 for defence witness as last chance.</i> |
| 15. | 26.07.2017 | <i>The appellant/accused filed a new 311 petition and the same was returned as not maintainable.</i> |
| 16. | 01.08.2017 | <i>Posted for argument of respondent/complainant and argument was advanced. Adjourned the case to 08.08.2017 for accused side argument.</i> |



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| 17. | 08.08.2017 | <i>Posted for argument of accused side took adjourned to 09.08.2017.</i> |
| 18. | 09.08.2017 | <i>Again took adjournment saying that they preferred revision against the closing of evidence on 11.07.2017. The case was adjourned to 21.08.2017 for production of High Court stay order copy</i> |
| 19. | 21.08.2017 | <i>High Court stay order copy was not produced adjourned for orders by 05.09.2017 on that day accused appeared and filed a petition under Section 309 of Cr.P.C. along with a memo, private notice and petition copy filed before the Hon'ble High Court in Crl.O.P. No.16776/2017. The case was adjourned to 08.09.2017 for production of high Court order copy.</i> |
| 20. | 08.09.2017 | <i>No High Court stay order copy produced again adjourn to 12.09.2017.</i> |
| 21. | 12.09.2017 | <i>No High Court stay order copy produced posted for Judgment on 18.09.2017.</i> |
| 22. | 18.09.2017 | <i>Judgment Pronounced. Dismissing the petition filed by the appellant/accused under Section 309 of Cr.P.C.</i> |

From the above particulars it is found that the complaint was filed in the year 2015, proof affidavit was filed on 04.04.2015 and till 10.08.2016 for nearly 4 months Pw1 was not cross examined. Application filed by



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the accused under Section 311 was allowed on payment of cost and even after that the accused did not take any steps to cross examine the complainant. Subsequently for several hearings she did not cross examine and finally the case was adjourned to 26.02.2017 for defence side witness. The case was dragged on for nearly 2 years by the accused side on various reasons. Therefore, this court finds that the accused had made a false plea before this court that she was not given sufficient opportunity to cross examine Pw1 as well as to adduce evidence on her side. She has abused the process of court and the process of law by dragging to the case for years together. Therefore, the ground raised by the accused that she was not given sufficient opportunity stands rejected.”

13. In the instant case, the accused did not issue any reply notice and as already observed, she did not take steps to cross examine PW.1 and hence, it has to be construed that she had not denied the issuance of cheque (Ex.P1) in favour of the complainant. The cheque was returned for the reason 'Payment stopped by the drawer'. The accused had not given any explanation as to why she stopped the payment for the cheque issued by her to the complainant. The burden is on the accused to prove that payment was stopped for a valid reason. In the circumstances, the conviction and sentence passed by both the Courts below cannot be



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14. In the result,

- (i) The Criminal Revision Petition stands dismissed.
- (ii) The judgment dated 25.06.2020 passed by the III Additional District and Sessions Judge, Coimbatore in C.A.No.332 of 2017 and the judgment dated 18.09.2017 passed by the Judicial Magistrate, FTC-I, (Magisterial Level), Coimbatore, in C.C.No.150 of 2016, are confirmed.
- (iii) The revision petitioner/accused shall surrender before the learned Judicial Magistrate, FTC-I, (Magisterial Level), Coimbatore, 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.



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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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- To
- 1.The III Additional District and Sessions Judge,
Coimbatore.
 - 2.The Judicial Magistrate, FTC-I, (Magisterial Level),
Coimbatore.



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R. HEMALATHA, J.
dm

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