



Crl.R.C(MD)No.672 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.672 of 2024

and

Crl.M.P.(MD)No.6889 of 2024

S.Noornisha

... Petitioner/Petitioner/Appellant

Vs.

K.Selvan

... Respondent/Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the impugned order dated 25.04.2024 made by the learned II Additional District and Sessions Court, Tiruchirappalli in Cr.M.P.No.1559 of 2024 in Crl.A.No.22 of 2024 and set aside the condition directing the petitioner to deposit 20% of the compensation amount before the learned District Munsif cum Judicial Magistrate, Srirangam within 60 days.

For Petitioner : Mr.J.K.Jeya Seelan

* * * * *



Crl.R.C(MD)No.672 of 2024

ORDER

WEB COPY

This Criminal Revision Case has been filed against the order dated 25.04.2024 made by the learned II Additional District and Sessions Court, Tiruchirappalli in Cr.M.P.No.1559 of 2024 in Crl.A.No.22 of 2024 and set aside the condition directing the petitioner to deposit 20% of the compensation amount before the learned District Munsif cum Judicial Magistrate, Srirangam within 60 days.

2.The case of the prosecution is that the complainant and accused and her husband were family friends and had business. The accused had borrowed Rs.20,00,000/- as hand loan from the complainant on 13.11.2016 to develop her husband business. Her husband was doing business in the name and style of Trichy Gas Stove, Sale and service in Trichy. The accused had promised to repay the entire amount within 3 months. After borrowing the loan amount, the accused had repaid a sum of Rs.1,45,000/- to the complainant. The repaid amount was entered in a note book and the accused signed in the note book. The complainant has demanded the balance amount Rs.18,55,000/- from the accused several times, but the accused was evasive. In spite of repeated demands, the complainant finally on 05.01.2018, had issued a cheque in favour of the



Crl.R.C(MD)No.672 of 2024

complainant for Rs.18,55,000/-. The complainant on trust over the accused presented the same on 06.01.2018 for encashment in the bank. The said cheque was dishonoured with endorsement "Insufficient funds". Therefore, the complainant issued a Statutory demand notice to the accused dated 03.03.2018, which was received by the accused on 05.03.2018. Further rejoinder notice was issued by the complainant on 02.04.2018 & 03.04.2018 (with regard to the correction of Cheque number and date). Hence, he lodged a complaint under Section 138 of the Negotiable Instrument Act, since no amount was paid.

3. During the trial, the complainant has examined one witness as P.W.1 and exhibited 10 documents as Ex.P.1 to Ex.P.10 and one witness was examined on the defence side and no exhibits were marked on the defence side and no Material Objects were marked on both sides.

4. The learned District Munsif cum Judicial Magistrate, Srirangam, after full-fledged trial, has passed the judgment in S.T.C.No.319 of 2019, dated 07.02.2024 and convicted the petitioner/accused for the offence under Section 138 of Negotiable Instruments Act, and sentenced him to undergo one year Simple Imprisonment and to pay a compensation of Rs.18,55,000/- along with



Crl.R.C(MD)No.672 of 2024

Rs.1,45,000/- totally Rs.20,00,000/- as compensation under Section 357 of Cr.P.C. to the complainant in default to undergo three months Simple Imprisonment.

5.Challenging the above said conviction and sentence, the petitioner preferred the Criminal Appeal before the II Additional District and Sessions Court, Trichirappalli, in C.A.No.22 of 2024 seeking suspension of sentence. However, the same was allowed with a condition on 25.04.2024. Aggrieved over the condition No.2, imposed by the Court below, the petitioner preferred the present Criminal Revision Case.

6. The learned Appellate Judge as per the provision of the Negotiable Instrument Act has imposed 20% amount and has passed a detailed order with the following conditions:

“i)the petitioner/appellant shall appear before the concerned Judicial Magistrate Court within 7 working days and on her appearance, she has to be released on interim bail on executing a bond for Rs.20,000/- along with two sureties, each for like sum to the satisfaction of the concerned Judicial Magistrate.



Crl.R.C(MD)No.672 of 2024

WEB COPY

ii)the petitioner/appellant shall deposit of Rs.3,71,000/- being 20% of the cheque amount before the trial Court, within 60 days from the date of this order.

iii)if the petitioner/appellant deposits the above said amount within the time frame fixed by this Court, the bail order shall be made absolute till the disposal of this appeal.

iv)if the petitioner/appellant fails to deposit the amount within the time frame fixed above, the interim bail shall stand cancelled.

v)the petitioner/appellant shall appear before this Court and trial Court as and when required.”

7.The learned Counsel for the petitioner has relied on the Judgment of the Hon'ble Supreme Court of India in ***Jamboo Bhandari Vs. M.P.State Industrial Development Corporation Lt., & ORS.*** reported in ***2023 LiveLaw(SC) 776.***

8.The learned Counsel for the respondent submits that the trial Court has correctly granted interim bail to the petitioner with certain conditions. Hence, he prayed for dismissal of the case.



Crl.R.C(MD)No.672 of 2024

9.This Court considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record and the impugned order.

10. The Learned Trial Judge has convicted the petitioner under section 138 of Negotiable Instrument Act with specific finding that the petitioner has not adduced any evidence to rebut the presumption arose under section 139 of the Negotiable Instrument Act. The learned trial Judge also held that there is no positive evidence to dispel the presumption under section 139 of the Negotiable Instrument Act. She admitted signature in the cheque. The Learned Judge also relied the Hon'ble Supreme Court Judgment reported in **2009 (2) SCC 513** and held that the accused is duty bound to bring on record such facts and circumstances, upon the consideration of which, the court may either believe that consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. In this case according to the Learned Trial Judge there was no such evidence. Therefore, the learned appellate Judge while considering the suspension of sentence directed to deposit the 20% of the amount as per the amended provision of the negotiable instrument Act. The same was considered



Crl.R.C(MD)No.672 of 2024

by the Hon'ble Supreme court and observed that in the exceptional circumstances, the Court has power to impose the condition to deposit 20% of the compensation amount. The petitioner's case is comes under the exceptional circumstances i.e., issuance the cheque was admitted and no evidence adduced to dispel the presumption under section 139 of Negotiable Instrument Act. Therefore, this court finds no merit in the contention of the learned counsel of the petitioner that the learned appellate Judge erroneously imposed the condition. Further, the learned appellate judge acted within the parameter laid down by the Hon'ble Supreme Court **2019 (11) SCC 341**.

11. Accordingly, this Criminal Revision case is dismissed and the order passed by the learned II Additional District & Sessions Judge, Tiruchirappalli in Crl.A.No.22 of 2024, dated 25.04.2024 is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

10.07.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

RJR/sbn



Crl.R.C(MD)No.672 of 2024

WEB COPY

To

- 1.The learned II Additional District and Sessions Court,
Tiruchirappalli.
- 2.The learned District Munsif cum Judicial Magistrate,
Srirangam.
- 3.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.672 of 2024

K.K.RAMAKRISHNAN, J.

RJR

Crl.R.C(MD)No.672 of 2024
and
Crl.M.P.(MD)No.6889 of 2024

10.07.2024