IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2024
PRONOUNCED ON : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1182 of 2024

S.Jayanthi ... Petitioner / Accused

Vs.

K.A.C.Kumar ... Respondent / Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w Section 401 of Cr.P.C., to set aside the Judgment dated 28.10.2023 in C.A.No.2 of 2023 passed by the learned Additional District and Sessions Judge, Dharmapuri, confirming the Judgment and Sentence of Imprisonment and compensation passed by the learned Judicial Magistrate, Fast Track Court (ML) Dharmapuri in C.C.No.71 of 2019, as per the Judgment, dated 18.02.2020.

For Petitioner : Mr.D.Ramesh Kumar

For Respondent : Mr.M.Santhosh Nagarajan

O R D E R

Challenging the Judgment dated 28.10.2023 in C.A.No.2 of 2023 passed by the learned Additional District and Sessions Judge, Dharmapuri, confirming the Judgment and Sentence of Imprisonment and compensation passed by the learned Judicial Magistrate, Fast Track Court (ML) Dharmapuri in C.C.No.71 of 2019, dated 18.02.2020, the present Revision is filed.

2. Mr.D.Ramesh Kumar, the learned counsel appearing for the Revision Petitioner would submit that the complaint filed by the respondent is unsustainable as there was no legally enforceable liability for the cheque under Ex.P1 as no hand loan obtained by the Revision Petitioner on 13.03.2018 from the respondent / complainant and Ex.P1, dated 13.05.2018 not issued to the complainant for Rs. 5,00,000/- either on 13.03.2018 or any other date to discharge the alleged hand loan, as falsely claimed by the complainant. The complainant not proved that the accused borrowed Rs.5,00,000/-, as hand loan from the complainant on 13.03.2018 and issued Ex.P1, post dated cheque, bearing No 569175, dated 13.05.2018, to discharge the said loan as falsely claimed by the complainant as per notice under Ex.P3. On the contrary, the accused has proved by way of cross

examination of PW.1 that the said cheque was issued as blank and signed cheque, as security to one Suresh, who was running a house hold articles shop, towards hire purchase monthly installment for the house hold articles purchased by the accused from the said Suresh on hire purchase basis.

3. The learned counsel appearing for the petitioner further submitted that the complainant not filed any documentary evidence to prove that he lent a loan amount of Rs.5,00,000/- to the accused on 13.03.2018. The complainant has admitted in his cross examination that he did not obtain any demand promissory note or any other document, as proof of loan, from the petitioner for the alleged loan. The complainant has not examined any other witness to prove his claim that he lent hand-loan to the petitioner on 13.03.2018 and the petitioner issued Ex.P1, post dated cheque, on the same day to discharge the said non existing hand loan amount. P.W.1 in his evidence admitted that he was not having sufficient source of income to lend the huge amount of Rs.5,00,000/- as hand loan to the petitioner. PW1 in his cross examination stated that he was running a medical shop as owner. For the next question he answered that he was not owner of the medical shop but he was an employee of that medical

shop working on a meager monthly salary. PW.1 in cross stated that he has not disclosed the alleged loan of Rs.5,00,000/- to the accused in his Income Tax Return, but the said loan amount disclosed in the Income Tax Returns filed by his wife and the same not produced by him before the trial court.

4. The learned counsel appearing for the petitioner further submitted that PW.1 not stated in his evidence what was the interest amount payable by the accused on the alleged loan amount. The Courts below passed the Judgment only by observing that when the accused admitted her signature in Ex. P1 cheque, offence u/s 138 of NI Act has been made out against the accused, thereby, completely and arbitrarily ignoring the entire cross examination of PW 1 on several vital and material facts. The learned counsel relied on the decision of this Court in ***S. Nagalakshmi Vs R. Nagalingam*** reported in ***2012 (3) MLJ Crl. 174*** for the point that "if no material is produced by the complainant to prove that he advanced loan to the accused that cannot be any legally enforceable liability and the complaint U/S 138 is liable to dismissed." Further, the learned counsel also relied the decision of this Court ***N.Seerangan Vs. Khalid Haaji*** reported in ***2012(1) MLJ Crl.741*** for the point that

when the complainant has failed to prove existence of legally enforceable liability between the complainant and the accused, the complainant is not entitled to relief.

5. The learned counsel further relied on the Judgment of Hon'ble Apex Court in ***Krishna Janardhan Bhat Vs. Dattatraya G.Hedge*** reported in ***2008 (1) CTC 433*** that the presumption U/S 139 of the NI Act can be raised only to show that the cheque was issued to discharge part or whole of the liability and there cannot be any presumption for the existence of the mandatory legally enforceable liability and the same has to be proved only by the complainant by letting in documentary evidence. The blank and signed cheque was issued on to one Suresh, owner of a household articles shop towards security for payment of monthly purchase installment of Rs. 3,500/- and the same has been illegally handed over to the complainant by the said Suresh to file the compliant against the revision petitioner.

6. The learned counsel for the petitioner relied on a decision of this Court in ***S.S. Ummul Habiba Vs. B. Rajendran*** reported in ***2004 (3) Crimes 505*** wherein it has been stated that "Presumption could be rebutted by the accused either by direct evidence or from facts and circumstances and by eliciting the cross examination of the

complainant. When the complainant has not proved that the cheque was issued to discharge any legally enforceable liability the accused is entitled to be acquitted " Further relied on a decision of this Court in ***Kumaraguru Finance Vs. M. Ganesan*** reported in ***2009 (2) MLJ (Crl) 971*** wherein it has been held that "When the complainant failed to prove that the cheque was drawn only for discharging a subsisting liability, he is not entitled to the relief U/S 138 of Negotiable Instrument Act. Further relied on the decision of this Court in the decision ***Yashpal Vs. Vijayakumar*** reported in ***2008 (2) MLJ (Crl)*** wherein it has been held that "When the complainant did not get any document for the alleged loan presumption U/S 139 of NI Act is rebutted and burden of proving that there was a legally enforceable debt or liability shifts to the complainant. If the same is not discharged by the complainant the accused is entitled to be acquitted". Further relied on the Judgment of Apex Court in ***Rev.Mother Marykutty Vs Reni C. Kottaram and Another*** reported in ***2012 (4) MLJ (Crl) 526*** wherein it has been held that, “When the accused sufficiently rebutted initial presumption as regards issuance of cheque under Sections 138 and 139 of NI Act Preponderance of probabilities fully supports stand of the accused and the accused is entitled to be acquitted ".

7. Mr.M.Santhosh Nagarajan, the learned Counsel appearing for the Respondent / Complainant would submit that the Petitioner/Accused borrowed a sum of Rs.5,00,000/- from the complainant on 13.03.2018 and promised to repay the amount. The Petitioner failed to repay the amount as promised and after repeated request, the petitioner issued a Cheque, dated 13.05.2018. When the complainant presented the Cheque on 15.06.2018 in IDBI, Dharmapuri, for collection, the same was returned on 18.06.2018 within an endorsement, 'Account Closed”. Thereafter, the complainant issued Legal Notice to the petitioner on 04.07.2018 requesting her to repay the said loan amount, but she failed to repay the amount. Hence, the complainant lodged the complaint under Sections 138 and 142 of Negotiable Instruments Act, on the file of the learned Judicial Magistrate (FTC), Magisterial Level, Dharmapuri, which was taken on file in C.C.No.71 of 2018. After trial, the trial Court found the petitioner is guilty for offence under Section 138 of Negotiable Instruments Act and sentenced her to undergo four months Simple Imprisonment and to pay the cheque amount of Rs.5,00,000/-, as compensation to the complainant, within a period of two months, in default, the accused undergo simple imprisonment for the period of one month.

8. Aggrieved over the same, the petitioner preferred an Appeal in Crl.A.No.2 of 2023 before the learned Additional District and Sessions Judge, Dharmapuri. The learned Additional District and Sessions Judge, dismissed the Criminal Appeal preferred by the Revision Petitioner and confirmed the Judgment of the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Dharmapuri in C.C.No.71 of 2018, on 18.02.2020. Against which, the present Revision. Hence, the learned counsel for the Complainant prays for dismissal of the Revision.

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. On perusal of the records it is seen that earlier this Court, in Crl.M.P.No.9968 of 2024 in Crl.R.C.No.1182 of 2024, by order dated 12.07.2024, suspended the substantive sentence of imprisonment alone, imposed on the petitioner on condition that the petitioner to deposit 50% of the cheque amount within a period of four weeks from the date of receipt of a copy of that order, to the credit of C.C.No.71 of 2018, on the file of the learned Judicial Magistrate, Fast Track Court

(ML) Dharmapuri. Thereafter, the petitioner filed a Criminal Miscellaneous Petition in Crl.M.P.No.12281 of 2024 in Crl.R.C.No.1182 of 2024 praying to extend the time by four weeks to surrender and deposit the conditional order, dated 12.07.2023, on the ground that the petitioner's mother suffered heart attack and she was attending her mother and for that reason she was unable to deposit the amount within the stipulated period and under take to comply with the conditional order, dated 12.07.2024, on or before 26.09.2024. Accordingly, this Court extended the time till 26.09.2024 on humanitarian grounds. When the matter came up for hearing on 26.09.2024, it is reported that the petitioner not deposited the amount, as ordered by this Court. Hence, this Court directed the Registry to list the matter on 24.10.2024 and on that day, after hearing the parties, orders were reserved in this case to decide the matters on merits.

11. Among the contentions, which the petitioner/accused raised, the prime contention was regarding denial of having issued the cheque to the Complainant, although she admits her signature therein. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 the Act can legally

be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. According to the petitioner, a signed cheque was issued in blank, as security to one Suresh, who was running a house hold articles shop, towards hire purchase monthly installment for the house hold articles purchased by the petitioner from the said Suresh on hire purchase basis. The complainant examined himself as PW-1 and in his evidence in examination-in-chief in tune with the averments in the complaint. The petitioner has not disputed or denied the signature in the cheque. It is admitted that Ex.P1/Cheque, for Rs.5,00,000/-. The petitioner has not proved her case with acceptable evidence that the cheque was issued as security and she is not liable to pay any amount to the complainant.

12. In the case of Section 138 of Negotiable Instruments, when legal presumption stands in favour of complainant that the cheque was issued by accused in discharge of her legal liability, the burden is actually upon the accused to rebut such presumption and the Court cannot proceed, as if the complainant was required to prove his own

case. However, the standard of proof upon the accused is only preponderance of probability. Merely setting up a plea that the cheque was not issued in discharge of legal liability is not sufficient. Something which is probable has to be brought on record for shifting the burden of proof. To disprove the presumption, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under circumstances of the case, act upon the plea that they did not exist. In view of legal presumption, which already stood in favour of complainant, by virtue of Section 139 of Negotiable Instruments Act, the burden was in fact, upon the accused to rebut such presumption and prove that she did not borrow any such amount from the complainant.

13. It is seen from the records that there is no contradiction in the evidence of P.W.1 and pleadings as to date of lending of money and date of issuance of cheque by the Petitioner. Nothing has been elicited from the evidence of P.W.1 to disbelieve the same. The petitioner has not chosen to take any step against the said Suresh, for not returning the signed blank cheque. Further, the said Suresh not

examined by the Petitioner to establish the fact that the cheque was issued only to the said Suresh. In the considered opinion of this Court, both the Courts below have properly analysed and appreciated the evidence and rightly decided the case against the petitioner and I do not find any infirmity in the order passed by the Courts below.

14. In the result, the Criminal Revision Case stands dismissed. The conditional order already granted by this Court on 12.07.2024 in Crl.M.P.No.9968/2024 in Crl.R.C.No.1182 of 2024, and subsequently, extended till 26.09.2024, suspending the sentence imposed on the petitioner, stands vacated. The trial Court to take steps by executing conviction warrant against the petitioner/accused to undergo the conviction and sentence passed against her.

31.01.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

1.The Additional District and Sessions Judge,
Dharmapuri.

2.The Judicial Magistrate,
Fast Track Court (ML)
Dharmapuri.

M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

Crl.R.C.No.1182 of 2024

31.01.2025