

Vijaya Vs. S. Babu

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Court : Chennai

Decided On : Oct-30-2012

Judge : C.S. Karnan

Appeal No. : Crl.R.C.No.1327 of 2007

Appellant : Vijaya

Respondent : S. Babu

Advocate for Pet/Ap. : For the Petitioner: H. Rajasekar, Advocate. For the Respondent: No Appearance.

Judgement :

(Prayer: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for records in C.A.No.395 of 2005, on the file of the learned VI Additional Sessions Judge, Chennai and set-aside the order dated 10.08.2007, confirming the conviction and sentence rendered by the learned XVI Metropolitan Magistrate, George Town, Chennai in C.C.No.1561 of 2003 by a judgment dated 07.11.2005.)

1. The revision petitioner herein / appellant / accused has preferred the present revision in Crl.R.C.No.1327 of 2007, against the judgment made in C.A.No.395 of 2005, on the file of VI Additional Sessions Judge, Chennai, confirming the conviction and sentence passed in C.C.No.1561 of 2003, on the file of the XVI Metropolitan Magistrate, George Town, Chennai.

2. The respondent / complainant's case is as follows:-

The accused had borrowed a sum of Rs.12,00,000/- from the complainant and in order to discharge the said loan had issued two cheques, each for a sum of Rs.6,00,000/-, bearing cheque Nos.158982 and 158983 dated 23.11.2002 and 23.10.2002 respectively, drawn on Union Bank of India, Washermenpet Branch, to and in favour of the complainant. When the complainant presented the said cheques for encashment with his bankers, viz., Union Bank of India, Washermenpet Branch, it were returned unpaid for the reason "insufficient funds". On request made by the accused, the complainant re-presented the said cheques on 26.12.2002., it were once again returned unpaid with an endorsement of "insufficient funds" on the same day. The complainant sent a legal notice to the accused on 03.01.2003, which was received by the accused. The accused sent a reply notice making false allegations. Hence, the complainant had filed a complaint against the accused for an offence under Section 138 of Negotiable Instruments Act before the XVI Metropolitan Magistrate, George Town, Chennai.

3. On being questioned, the accused pleaded not guilty and hence trial was conducted. On the complainant's side, two witnesses were examined and eight documents were marked as Exs.P1 to P8, viz., Ex.P1-cheque dated 23.10.2002, Ex.P2-cheque dated 23.11.2002, Ex.P3-return memo (series), Ex.P4-statutory notice, Ex.P5-acknowledgment card, Ex.P6-reply notice sent by the accused, Ex.P7-earlier return advice dated 20.11.2002 and Ex.P8-earlier return memo advice dated 23.11.2002. On the side of the accused, no witness, no documents.

4. P.W.1, the wife of the complainant and power of attorney holder of the complainant had adduced evidence which is corroborative with the statements made in the complaint and in support of her evidence had marked the exhibits listed as Exs.P1 to P8.

5. P.W.2, Srinivasan, Officer of Union Bank of India, Washermenpet Branch had adduced that he is the power of attorney holder of the bank and has marked the power of attorney letter as Ex.P9. P.W.2 deposed that initially when the said cheques (Exs.P1 and P2) were presented at their bank for encashment, it were returned unpaid due to insufficient funds in the account of accused through return

memos marked as Exs.P7 and P8 and that the cheques were once returned unpaid, on presentation on 26.12.2002 for the reason "insufficient funds" in the account of the accused.

6. It has been contended on the side of the accused that the said cheques were not supported by consideration and that the complainant has no means to give Rs.12,00,000/- as loan to the accused and that the impugned cheques were obtained under coercion and threat. It was pointed out that the accused had preferred a complaint against the complainant before the police authorities and that a civil suit for declaration was pending.

7. The learned Magistrate observed that the accused had not denied her signature in the exhibits marked as Exs.P1 and P2. On behalf of the accused, two different stands were taken, in so far as to how the cheques reached the hands of the complainant. During cross-examination of P.W.1, at one point, it was suggested to P.W.1 that the complainant kidnapped the child of the accused and obtained the cheques under threat and coercion. Again, at another point of time, it was suggested to P.W.1 that the impugned cheques were issued as a measure of security to the complainant since on his recommendation, his friend Sugumar sold a "Maruthi Zen" car to the accused. It was not specifically mentioned in the suggestions as to which cheque was obtained by threat and coercion and which cheque was issued as security for repayment of car loan to the complainant's friend, viz., Sugumar. The learned Magistrate also observed that the accused had filed a civil suit for declaration, that the cheques in possession of the complainant were not supported by consideration, on the file of XVII Assistant City Civil Judge, Chennai in O.S.No.6263 of 2002. Regarding the said suit no whisper is there on the side of the accused. However, in the notes of arguments filed by the complainant, it was mentioned that the said suit was dismissed for default. Hence, the learned Magistrate on scrutiny of the oral and documentary evidence, held the accused guilty of offence under Section 138 of Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for six months and also imposed a fine of Rs.5,000/-. In default of payment of fine, the accused was to undergo further period of simple imprisonment for three months.

8. Aggrieved by the conviction and sentence imposed by the trial Court, the accused has preferred an appeal in C.A.No.395 of 2005 before the VI Additional Sessions Judge, Chennai. The learned judge on careful scrutiny of the oral and documentary evidence and after perusal of trial Court's order, dismissed the appeal and confirmed the conviction and sentence imposed on the accused by the trial Court.

9. Aggrieved by the dismissal of her appeal , the appellant / accused has preferred the present revision.

10. The learned counsel for the revision petitioner has contended that the lower Court had not considered the ground raised that the accused was not examined under Section 313 of Cr.P.C. After examination of P.W.2, while the accused was waiting to be questioned, the learned Magistrate closed the defense side which caused great prejudice to the accused. It was contended that the learned appellate court had lost sight of the defense argument that there was no mention about the mode of payment of money either in the statutory notice, the complaint, the sworn statement or the proof affidavit of P.W.1 and that in the cross-examination of the witness, it was contended that the money was paid by cheques. As there was no ambiguity in the statement, permission by the trial Court to re-examine the witness on the aspect was perse against the provisions of the Evidence Act. It was contended that the Courts below failed to see that the complainant ought to have substantiated his capacity to advance such a huge sum. The learned counsel for the revision petitioner further submitted that as per complaint the so called, "transactions" existed only between the accused and complainant. As such, the power agent of the complainant, who does not have any knowledge about the said transactions had adduced evidence and hence this evidence should be rejected. The learned counsel further submitted that the main contention in the complaint is that the complainant had paid a sum of Rs.12,00,000/- to the accused. It is not normal that any person would advance such a huge sum without valid security and advance such sums based merely on cheques.

11. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel for the revision petitioner and on perusing the judgments of

the Courts below, this Court does not find any discrepancy in the conclusions arrived at for convicting the accused. The complainant had proved his case. As such, he is entitled to receive compensation from the accused. Therefore, this Court directs the accused to pay a sum of Rs.3,00,000/- as compensation to the complainant. The period of simple imprisonment of six months imposed on the accused is on the higher side and therefore, this Court reduces the sentence from six months simple imprisonment to three months simple imprisonment. The accused has to either pay compensation or to undergo simple imprisonment for three months. This Court directs the learned XVI Metropolitan Magistrate, George Town, Chennai to issue bailable warrant and secure the accused into judicial custody in order to undergo three months simple imprisonment. If the accused remits the compensation amount into the credit of C.C.No.1561 of 2003, on the file of XVI Metropolitan Magistrate, George Town, Chennai before being remanded into judicial custody, she would be set at liberty and the period of three months simple imprisonment would not be executed any further against the accused. If the accused deposits the said amount before the trial Court, it is open to the complainant to withdraw the same after filing a Memo. If the accused pays the said compensation amount, the fine amount of a sum of Rs.5,000/- paid by her is to be refunded to her. The order has been passed by this Court after invoking the discretionary power vested with it.

12. Resultantly, the above revision is partly allowed with the above modifications. Consequently, the conviction and judgment passed in C.A.No.395 of 2005, on the file of the learned VI Additional Sessions Judge, Chennai , dated 10.08.2007, confirming the judgment made in C.C.No.1561 of 2003, on the file of XVI Metropolitan Magistrate, George Town, Chennai dated 07.11.2005 is modified. Accordingly ordered.

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