

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 181 OF 2012

[ARISING OUT OF SLP (CRL.) NO. 10537 OF 2010]

B. CHANDRAMATHI

...

APPELLANT

Versus

N. PRAKASH

...

RESPONDENT

ORDER

1. Leave granted.

2. This appeal, by grant of special leave, is directed against the judgment and order dated 19.8.2008 passed by the High Court of Karnataka at Bangalore dismissing Criminal Revision Petition No.639 of 2007 filed by the appellant.

3. The appellant-accused obtained a loan of Rs.4 lakhs on 22.7.2002 from the respondent-complainant on execution of

promissory note and agreed to repay the same with interest at 18% per annum. On 23.10.2002, the appellant issued a cheque bearing No. 069725 for Rs.2 lakhs towards the repayment of the loan amount. When the said cheque was presented to the banker the same was returned with an endorsement "Insufficient Funds." The respondent served a legal notice upon the appellant on 30.10.2002 and called upon her to pay the cheque amount. The appellant replied to the said notice on 12.12.2010 and sought three months time to repay the amount. She did not repay the amount. On the basis of the bounced cheque, the respondent filed a complaint bearing No. CC 1217/03 before the Principal JMFC Court, Davanagere. Learned JMFC convicted the appellant for offence under Section 138 of the Negotiable Instruments Act and sentenced her to simple imprisonment for one year and to pay a fine of Rs.5,000/-. Learned JMFC further directed the appellant to pay compensation of Rs.2,20,000/- to the respondent. On appeal learned Additional Sessions Judge confirmed the order of the trial court. The Criminal

Revision Petition filed by the appellant was dismissed by the High Court by the impugned order. The High Court thus confirmed the conviction and sentence of the appellant.

4. We have heard learned counsel for the appellant.

On 11.3.2011 a statement was made by learned counsel for the appellant that the appellant has deposited the amount of compensation i.e. Rs.2,20,000/-. A copy of the money receipt dated 15.11.2010 issued by the JMFC Court, Davanagere was filed in support of the statement. On that day, fresh notice was issued to the respondent to show-cause why the Special Leave Petition may not be disposed of by passing appropriate orders at the stage of admission after hearing both the sides. Despite service of notice, the respondent has neither appeared before this Court in person nor has he engaged any lawyer. We, therefore, proceed to dispose of this appeal.

5. We have carefully perused the impugned order. The High Court has confirmed the concurrent findings of the

courts below. The High Court's order cannot be characterized as perverse. Learned counsel for the appellant was unable to persuade us to take any other view of the matter. The appellant admitted her signature on the cheque. She sought time to repay the amount. She did not enter the witness box. In the circumstances, in our opinion, no interference is necessary with the order of conviction.

6. However, we find from the record that the appellant is about 51 years of age. She is a poor widow who is eking out a living for herself and her family by making jowar rotis and selling them. She is the only earning member of her family. She has two children to look after. It appears that the appellant is unwell. She is stated to have suffered from depression.

7. As of today, the appellant has undergone the sentence for a period of about 2½ months before she was released on bail. Considering the fact that the appellant has deposited the amount of compensation i.e. Rs.2,20,000/- and the fact

that the appellant is a widow and is the only earning member in the family and considering the fact that though served with notice the respondent has not cared to appear in this Court, we are of the opinion that sentence already undergone by her should be treated as a sentence for the offence under Section 138 of the Negotiable Instruments Act. Order accordingly. The appellant is on bail. Her bail bond stands discharged. Needless to say that this order is passed in the peculiar facts and circumstances of the case.

8. Appeal is disposed of in the aforestated terms.

.....J.
(AFTAB ALAM)

.....J.
(RANJANA PRAKASH DESAI)

NEW DELHI,
JANUARY 20, 2012.