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CrI.RC.No.1033 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HON'BLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

CrI.R.C.No.1033 of 2018

S.Bhuvaneswari

...

Petitioner

Vs

S.K.Sadhasivam

...

Respondent

Prayer : Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the judgment dated 21.06.2017 passed in CrI.A.No.102 of 2017 on the file of Additional Sessions Magalir Neethi Mandram (Fast Track Mahila Court) Erode by confirming the judgment of conviction imposed in S.T.C.No.40 of 2014 on the file of the learned Judicial Magistrate Fast Track Court No.II, Erode dated 04.04.2017.

For Petitioner : Ms.N.Premalatha
For Mr.R.Nalliyappan

For Respondent : No appearance

ORDER

This Criminal Revision Case has been filed to set aside the judgment dated 21.06.2017 passed in CrI.A.No.102 of 2017 on the file of Additional Sessions Magalir Neethi Mandram (Fast Track Mahila Court) Erode, thereby confirming the judgment dated 04.04.2017 passed in S.T.C.No.40 of 2014 on



CrI.RC.No.1033 of 2018

WEB COPY

the file of the learned Judicial Magistrate Fast Track Court No.II, Erode, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. The petitioner is an accused in the complaint lodged by the respondent. The case of the complainant is that on 08.03.2013, the petitioner borrowed a sum of Rs.7,00,000/- for his urgent family expenses. In order to discharge his liability, he issued a post dated cheque for a sum of Rs.7,00,000/- drawn on State Bank of India, G.H.Road, Erode Branch to the complainant on 08.04.2013. When the said cheque was presented for collection, the same was returned for the reason “fund insufficient”. Immediately, the respondent caused statutory notice to the petitioner and the same was duly received by him. Even then, the petitioner failed to pay the cheque amount and also failed to issue any reply. Hence, the respondent lodged a complaint for the offence under Section 138 of Negotiable Instrument Act.

3. On the side of the respondent, he examined himself as P.W.1 and marked Exs.P1 to P7. On the side of the petitioner, he examined D.Ws.1 to 3 and marked Exs.D1 and D2.



CrI.RC.No.1033 of 2018

WEB COPY

4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instrument Act and he was sentenced to undergo one year simple imprisonment for a period of one month and to pay a fine of Rs.5,000/- in default to undergo three month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed. Hence, this revision.

5. The learned counsel appearing for the petitioner would submit that the alleged cheque was marked as Ex.P1. There was a material alteration in the cheque. In the cheque, the year was printed as 2008, it was struck out and altered the year as 08.04.2013. Therefore, it is clear that there is a material alteration and without even asking for concurrence from the petitioner, the bank mechanically returned the cheque for the reason 'fund insufficient'. When there is a material alteration, the respective bank should have asked for clarification from the account holder. The petitioner examined the bank manager as D.W.2. However, both the Courts below failed to consider the same and convicted the petitioner for the offence under Section 138 of Negotiable Instrument Act.



CrI.RC.No.1033 of 2018

WEB COPY

6. A perusal of the records reveals that at the time of suspending the sentence imposed by the Courts below, this Court imposed condition that the petitioner shall deposit 50% of the cheque amount viz., Rs.3,50,000/- within a period of three weeks. However, the petitioner failed to comply with the condition and even today, no amount was deposited as directed by this Court. The only ground raised by the petitioner is that there was a material alteration in Ex.P1. In the cheque, the year 2008 was printed and as such it is clear that the year mentioned in the cheque is 2008. While issuing the cheque, the petitioner simply struck out the year and mentioned the date as 08.04.2013. Further, the petitioner examined her bank manager as D.W.2. He categorically deposed that Ex.P1 was issued on 11.11.2008 to the petitioner herein. The particular register for issuance of cheque was marked as Ex.D2. He further deposed that after striking of the year mentioned, the cheque date viz., 08.04.2013, is mentioned by striking out the printed year. The petitioner ought to have signed in the place of alteration. However, when there is no counter signature found for the alteration, if the cheque amount was available in the bank account, it will be returned for the reason "there is material alteration'. However, in the account of the petitioner, no amount was lying to honour the cheque issued for a sum of Rs.7,00,000/-. Therefore, it was returned for the reason 'fund insufficient'.



CrL.RC.No.1033 of 2018

WEB COPY

7. That apart, on receipt of the statutory notice, the petitioner failed to reply to rebut the case of the respondent herein. The petitioner also failed to deny the issuance of cheque and signature found in the cheque. Therefore, the respondent clearly proved his case and the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

8. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision Case stands dismissed.

13.10.2022

Index: Yes/No
Speaking / Non Speaking Order

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To

1.The Additional Sessions Magalir Neethi Mandram
(Fast Track Mahila Court) Erode

2. The Judicial Magistrate Fast Track Court No.II, Erode



WEB COPY



CrI.RC.No.1033 of 2018

G.K.ILANTHIRAIYAN, J

Lpp

CrI.R.C.No.1033 of 2018

13.10.2022