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CRL.R.C.No.371 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.371 of 2018

A.S.Vijaya

... Petitioner

Vs.

S.Loganathan

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the Judgment dated 08.01.2018 passed in C.A.No.35 of 2015 on the file of the first Additional District and Sessions Judge, Erode confirming the judgment dated 10.04.2015 passed in S.T.C.No.535 of 2013 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode by allowing the present Criminal Revision Petition.

For Petitioner	:	Mr.I.C.Vasudevan
For Respondent	:	Mr.C.Ramaraj
		for Mr.M.Guruprasad

ORDER

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This Criminal Revision Petition has been filed to set-aside the Judgment dated 08.01.2018 passed in C.A.No.35 of 2015 on the file of the first Additional District and Sessions Judge, Erode, thereby confirmed the judgment dated 10.04.2015 passed in S.T.C.No.535 of 2013 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the respondent. The respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act alleging that on 09.09.2012, the petitioner herein borrowed a sum of Rs.5,00,000/- from the respondent and promised to repay the same. In order to repay the same, the petitioner issued a cheque on 07.11.2012 drawn on Indian Bank, Chennimalai Branch. It was presented for collection and on the same day, it was returned dishonor for the reason "Funds Insufficient". After causing notice, the respondent lodged a complaint. On the side of the respondent, the respondent was examined as P.W.1 and marked Ex.P.1



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to Ex.P.5. The petitioner did not examine anybody and no evidence was marked. On perusal of oral and documentary evidence, incriminating evidences against the petitioner was taken out and he was examined under Section 313(1)(b) of Cr.P.C. Though, he denied the entire allegations, no oral or documentary evidence was produced by the petitioner before the Trial Court.

3. The Trial Court convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and also imposed fine of Rs.5,000/-. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and confirmed the conviction passed by the Trial Court. The petitioner raised specific grounds that the respondent failed to prove the case beyond any doubt. The Court below convicted the petitioner by its presumption and assumption filled up the vital gaps and basic lacunae of the respondent's case without any proper evidence.

4. The petitioner's husband was only having business transactions



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with the respondent and the petitioner is no way connected with any transactions between the petitioner's husband and the respondent. Ex.P.1 cheque was given only as security for the previous business transactions between her husband and the respondent. Therefore, there is no legally enforceable debt in favour of the respondent herein.

5. A perusal of records revealed that the petitioner borrowed a sum of Rs.5,00,000/- from the respondent. In order to repay the same, she issued cheque for a sum of Rs.5,00,000/- in favour of the respondent herein on 07.11.2012. It was presented for collection and the same was returned dishonor for the reason "Funds Insufficient". Though, the petitioner had taken specific grounds that she had no business transaction with the respondent herein, her husband alone had business transaction with the respondent herein, the said cheque was issued for security purpose that too for the earlier transactions between them. However, on receipt of the legal notice, the petitioner did not even replied for the statutory notice. Further, she did not even examine any witnesses to rebut the case of the respondent herein. Therefore, from Ex.P1 to Ex.P5,



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the respondent proved his case and the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. Further, she never denied her signature and issuance of cheque. That apart, she failed to rebut the presumption attached to the cheque through probable defence and not at all created any doubt in the case of the respondent herein.

6. In view of the above, this Court finds no infirmity or illegality in the orders passed by the Courts below and this petition is liable to be dismissed. Accordingly, this Criminal Revision Petition is dismissed.

27.09.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mn

To

1. The first Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate Court (Fast Track Court No.II), Erode.



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G.K.ILANTHIRAIYAN, J

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