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Crl.R.C.No.471 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

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

Crl.R.C.No.471 of 2018
and Crl.M.P.No.5648 of 2018

1.G.Sivaramakrishnan,
Director, (Sales & Marketing),
M/s.Royal Splendour and Developers Pvt.Ltd.,

2.T.K.Santhosh,
Managing Director,
M/s.Royal Splendour and Developers Pvt.Ltd.,
No.20, 6th Street, Rangarajapuram,
Saidapet, Chennai – 15.

... Petitioners

Vs.

S.P.Anitha

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the judgment passed by the Principal Sessions Judge, Thiruvallur, in C.A.No.95 of 2017 dated 15.03.2018 dismissing the appeal against the order of the learned Judicial Magistrate, Fast Track Court, Ambattur, dated 22.06.2017 in S.T.C.No.388 of 2016 convicting and sentencing the petitioners and acute them from all the charges.

For Petitioners : Mr.R.Radhapandian

For Respondent : Mr.S.Arivazhagan



Crl.R.C.No.471 of 2018

WEB COPY

ORDER

This Criminal Revision case has been filed as against the judgment passed by the Principal Sessions Judge, Thiruvallur, in C.A.No.95 of 2017 dated 15.03.2018 thereby confirming the order of the learned Judicial Magistrate, Fast Track Court, Ambattur, passed in S.T.C.No.388 of 2016 dated 22.06.2017 thereby convicted the petitioner for the offence under Section 138 of NI Act.

2. The petitioners are accused in the complaint lodged by the respondent for the offence under Section 138 of NI Act. The crux of the complaint is that the respondent was one of the customer, who was unduly influenced by the assurance and marketing strategies adopted by the accused to purchase a residential apartment with a built up area of 805 Sq.ft or thereabout including one exclusive car parking, comprised of an undivided share of land to an extent of 389 sq.ft from out of part and parcel of land measuring an extent of 18.5 cents situated in old Survey No.38, New Survey No.38/1, part and parcel of land at Erandan Kattalai Village, Sriperumbudur Taluk, Kancheepuram District.



3. The respondent and the petitioners have entered into an agreement for construction for a total sale consideration of Rs.27,27,963/- and the payment should be made on different stages. Accordingly, the respondent paid a sum of Rs.50,000/- as an advance on 28.03.2014 and paid another sum of Rs.50,000/- on 25.05.2014. Thereafter, the respondent paid Rs.4,13,050/-. Thus, a total sum of Rs.5,13,010/- was paid by the respondent from March 2014 to October 2014. Even after receipt of the entire amount, the petitioners failed to complete the construction work. That apart, the petitioners also failed to execute any sale deed in favour of the respondent in respect of undivided share therefore, the petitioners agreed to return the said amount and issued cheques. When both cheques were presented for collection, the same was returned dishonoured for the reason "funds insufficient". After causing statutory notice to the petitioners, the respondent lodged a complaint for the offence under Section 138 of NI Act.

4. On the side of the respondent he examined PW1 and marked Exs.P1 to P6 as exhibits and on the side of the petitioners DW1 was examined and Exs.D1 to 7 were marked.



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5. On perusal of oral and documentary evidence, the trial Court found the petitioners guilty for the offence under Section 138 of NI Act and sentenced them to undergo five months simple imprisonment and also awarded compensation to the tune of cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and confirmed the order of the trial Court. Hence this revision.

6. The learned counsel for the petitioner raised grounds that to rebut the presumption, the petitioners examined DW1 and marked Exs.D1 to 7. Therefore, the entire burden again shifted to the shoulder of the respondent. However, the respondent failed to disprove the case of the petitioners therefore, both the Courts below wrongly convicted the petitioners. After agreement of construction, the petitioner had completed the construction and about to finish the same. At that juncture, the respondent did not want to proceed to purchase the same and asked for return of money. Therefore, there was no legally enforceable debt to initiate any proceedings against the petitioners for the offence under Section 138 of NI Act. However, the petitioners intended to settle the issue amicably accordingly, the petitioners paid a sum of



Crl.R.C.No.471 of 2018

Rs.2,13,010/- by way of Demand Draft in favour of the respondent herein.

Further, the petitioner requested further time to settle the entire amount.

7. Considering the above submission, this Court finds no reason to interfere with the judgments passed by the Courts below. Accordingly, the criminal revision case stands dismissed. However, the petitioner is permitted to deposit the balance cheque amount directly to the respondent within a period of six weeks from today. If the petitioner settled the balance cheque amount directly to the respondent within a period of six weeks, the judgment passed by the Principal Sessions Judge, Thiruvallur, in C.A.No.95 of 2017 dated 15.03.2018 thereby confirming the order of the learned Judicial Magistrate, Fast Track Court, Ambattur, passed in S.T.C.No.388 of 2016 dated 22.06.2017 shall stand automatically set aside. Consequently, connected miscellaneous petition is closed.

03.11.2022

Index:Yes/No
Speaking/Non speaking order
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Crl.R.C.No.471 of 2018

To

- 1.The Principal Sessions Judge,
Thiruvallur.
- 2.The Judicial Magistrate, Fast Track Court,
Ambattur.



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Crl.R.C.No.471 of 2018

G.K.ILANTHIRAIYAN. J.

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Crl.R.C.No.471 of 2018

03.11.2022