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Crl.RC.No.560 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

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

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Reshma ... Petitioner/accused

Versus

S.Sankaran ... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment and conviction dated 16.03.2018 made in CA.No.275 of 2017 on the file of the I Additional District and Sessions Judge, Erode confirming the judgment dated 05.09.2017 made in STC.No.199 of 2015 on the file of the learned Judicial Magistrate(FTC No.II) Erode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.E.D.Sethupathi



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ORDER

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This criminal revision is filed against the judgment and conviction dated 16.03.2018 made in CA.No.275 of 2017 on the file of the I Additional District and Sessions Judge, Erode confirming the judgment dated 05.09.2017 made in STC.No.199 of 2015 on the file of the learned Judicial Magistrate(FTC No.II) Erode, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The case of the respondent is that on 10.04.2015, the petitioner borrowed a sum of Rs.2,35,000/- for his urgent family needs. In order to repay the same, the petitioner issued cheque for the said sum on 11.05.2015, which was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. Immediately after causing statutory notice, the respondent lodged complaint.

3. On the side of the respondent, he examined PW1 and marked Ex.P1 to Ex.P5. On the side of the petitioner, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the



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trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo one year imprisonment with fine of Rs.3,000/-, in default to undergo three months simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and confirmed the judgment passed by the trial court.

4. The learned counsel for the petitioner raised grounds that the respondent failed to prove the consideration which was passed under the impugned cheque. Therefore, the respondent failed to discharge the initial burden caused upon him to prove the offence punishable under Section 138 of NI Act. In fact, the petitioner never had seen the respondent and no acquaintance with him. The alleged cheque was issued in favour of third person for security purpose and the same was misused by the respondent and presented the complaint for the offence punishable under Section 138 of NI Act.

5. Heard, the learned counsel for the petitioner and the learned



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counsel for the respondent.

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6. On perusal of records, revealed that the petitioner never denied the signature found in the cheque and issuance of cheque. In fact, on receipt of the statutory notice, the petitioner failed to reply to rebut the presumption by probable defence. Therefore, the respondent discharged his initial burden as required under Section 138 of NI Act and as such, the presumption under Section 139 of NI Act comes in favour of the petitioner. Though it is rebuttable in nature by the accused through probable defence or atleast to create a shadow of doubt on the cheque that the cheque was not issued by the petitioner to the respondent in discharge of legally enforceable debt payable by her to the respondent, however the petitioner failed to rebut the same and as such, the courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the courts below.

7. Accordingly, this criminal revision is dismissed and the judgments of conviction and sentence passed by the Courts below are hereby confirmed. The trial Court is directed to take steps to secure the petitioner



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for the purpose of sentencing her to undergo the conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C. However, if the petitioner settles the amount in favour of the respondent, she is at liberty to approach this Court by way of proper petition.

01.11.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned I Additional District and Sessions Judge,
Erode
- 2.The learned Judicial Magistrate(FTC No.II) Erode.

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