

Crl.RC.Nos.433, 436 & 439 of 2019

G.K.ILANTHIRAIYAN, J.

At the instance of the learned counsel for the petitioners, today this matter has been posted under the caption “for being mentioned”.

2. The learned counsel for the petitioners would submit that while disposing of the petitions in Crl.RC.Nos.433, 436 & 439 of 2019 dated 28.11.2022 by this Court, due to inadvertence, it was mentioned as “Rs.5,90,000/- to be deposited”. Hence, he requested to issue a fresh order copy after correcting the same.

3. Heard, the learned counsel for the petitioners.

4. In view of the submissions of the learned counsel for the petitioners, it is ordered that the following corrections shall be made in the order passed in Crl.RC.Nos.433, 436 & 439 of 2019 dated 28.11.2022:

(i) In the twelfth paragraph of the order, in the third line, **“Rs.2,95,000/-”** shall read as **“Rs.2,50,000/-”**.

(ii) In the twelfth paragraph of the order, in the sixth line, **“Rs.4,00,000/-”** shall read as **“Rs.3,40,000/-”**.

(iii) In the fourteenth paragraph, in the fifth line, **“Rs.5,90,000/-”** shall read as **“Rs.3,40,000/-”**.

5. Accordingly, the Registry is directed to issue a fresh order copy in Crl.RC.Nos.433, 436 & 439 of 2019 dated 28.11.2022 after making necessary corrections.

07.12.2022

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Note: Issue order copy on 09.12.2022

Crl.RC.Nos.433, 436 & 439 of 2019

G.K.ILANTHIRAIYAN, J.

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Crl.RC.Nos.433, 436 & 439 of 2019

07.12.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM:

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

Crl.R.C.Nos.433, 436 & 439 of 2019

Crl.R.C.No.433 of 2019

Sridevi Petitioner

Vs

K.Rajendiran
Respondent

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee in C.A.No.95 of 2018 dated 18.02.2019 confirming the judgment of the learned Judicial Magistrate Fast Track Court, Magisterial Level, Ambattur in C.C.No.182 of 2017 dated 24.05.2018.

Crl.R.C.No.436 of 2019

Guruarulselvan Petitioner

Vs

R.Karthick

Respondent

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee in C.A.No.96 of 2018 dated 18.02.2019 confirming the judgment of the learned Judicial Magistrate Fast Track Court, Magisterial Level, Ambattur in C.C.No.183 of 2017 dated 24.05.2018.

Crl.R.C.No.439 of 2019

Sridevi Petitioner

Vs

R.Karthick
Respondent

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee in C.A.No.97 of 2018 dated 18.02.2019 confirming the judgment of the learned Judicial Magistrate Fast Track Court, Magisterial Level, Ambattur in C.C.No.184 of 2017 dated 24.05.2018.

In all Crl.R.Cs

For Petitioner : Mr.V.G.Anbarasu

For Respondent : Mr.A.Nagarajan

COMMON ORDER

Crl.R.C.Nos.433 & 439 of 2019

These Criminal Revision Cases have been filed to set aside the Judgement dated 18.02.2019 passed in C.A.Nos.95 & 97 of 2018 on the file of the III Additional District and Sessions Judge, Thiruvallur at Poonamallee, thereby confirming the judgment dated 24.05.2018 passed in C.C.Nos.182 & 184 of 2017 on the file of the Judicial Magistrate Fast Track Court (Magisterial Level) Ambattur, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. In both cases, the petitioner is an accused in the complaint lodged by the respondents for the offence punishable under Section 138 of Negotiable Instrument Act. The complainant is father and son in both cases. The petitioner borrowed a loan from the respondents and in order to repay the loan amount, she issued cheques. When all the cheques were presented for collection, the same were returned dishonoured for the reason 'Account Closed'.

After causing statutory notice, the respondents lodged complaint.

3. In C.C.No.182 of 2017, on the side of the complainant, he examined himself as P.W.1 and marked Exs.P1 to P8 and on the side of the respondent, she examined D.W.1 and marked Ex.D1. In C.C.No.184 of 2017, on the side of the complainant, he examined himself as P.W.1 and marked Exs.P1 to P6 and on the side of the respondent, she examined D.W.1 and marked Ex.D1.

4. On perusal of the oral and documentary evidence in both cases, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instrument Act and sentenced her to undergo five month simple imprisonment in both cases and to pay compensation to the tune of Rs.12,00,000/- in C.C.No.182 of 2017 and to pay compensation to the tune of Rs.8,85,000/- in C.C.No.184 of 2017, in default to undergo two months simple imprisonment in both cases. Aggrieved by the same, the petitioner preferred appeals and the same were dismissed and the orders of the Trial Court

were confirmed. Hence, these revisions.

5. The petitioner raised grounds that the respondent failed to prove the source of income for lending such a huge amount. Though, interest were not mentioned, the cheques were filled up by the respondents for higher amount than the alleged loan borrowed by her. The alleged cheques were issued only for security purpose and there was absolutely no legally enforceable debt.

6. A perusal of the records reveals that though the petitioner had taken a specific stand that the cheques were issued for security purpose and not for any legally enforceable debt, the petitioner failed to prove the same. Whereas, the respondents discharged their initial burden in order to prove their case. The petitioner never denied the signature found in the cheques and also issuance of the same. Though the petitioner had examined D.W.1, she failed to rebut the presumption under Section 139 of Negotiable Instrument Act. Hence, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

7. In view of the above, this Court finds no infirmity or illegality in the orders passed by the Courts below. Accordingly, Crl.R.C.Nos.433 and 439 of 2019 stand dismissed.

Crl.R.C.No.436 of 2019

8. This Criminal Revision Case has been filed to set aside the Judgement dated 18.02.2019 passed in C.A.No.96 of 2018 on the file of the III Additional District and Sessions Judge, Thiruvallur at Poonamallee, thereby confirming the judgment dated 24.05.2018 passed in C.C.No.183 of 2017 on the file of the Judicial Magistrate Fast Track Court (Magisterial Level), Ambattur, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

9. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instrument Act. The case of the respondent is that the petitioner borrowed a sum of Rs.5,00,000/- on 11.05.2016 and agreed to repay the said amount with interest. In order to repay the said amount, the petitioner issued a cheque for a

sum of Rs.5,90,000/- on 02.05.2017. When the said cheque was presented for collection, the same was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruction Act.

10. On the side of the respondent, he examined himself as P.W.1 and marked Exs.P1 to P6. On the side of the petitioner no one was examined and no document was marked.

11. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruction Act and he was sentenced to undergo six months simple imprisonment and also awarded a compensation of Rs.5,90,000/- in default to undergo two months 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.

12. The learned counsel appearing for the petitioner would submit

that this Court, while suspending the sentence, directed the petitioner to deposit a sum of Rs.2,95,000/-. Accordingly, the petitioner has duly complied with the condition. Now, he is ready and willing to settle the remaining cheque amount of Rs.4,00,000/-.

13. The learned counsel appearing for the respondent submitted that he had agreed to receive the said amount.

14. Considering the facts and circumstances of the case and also the submission made by the learned counsel, this Court is inclined to set aside the conviction and sentence imposed by the Trial Court on condition that the petitioner shall deposit a sum of Rs.5,90,000/- to the credit of the Trial Court on or before 26.12.2022. If the petitioner fails to deposit the said amount, the conviction and sentence imposed by the Trial Court shall stand automatically restored. On such deposit, the respondent is permitted to withdraw the entire cheque amount deposited by the petitioner by filing appropriate application. The Trial Court shall permit the respondent to withdraw the said amount, without ordering notice to the petitioner.

15. In the result, Crl.R.C.No.436 of 2019 stands allowed.

28.11.2022

Index : Yes/No

Internet : Yes

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Note : Issue order copy on 30.11.2022

To

1. The III Additional District and Sessions Judge,
Thiruvallur at Poonamallee

2.The Judicial Magistrate,
Fast Track Court (Magisterial Level)
Ambattur.

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G.K.ILANTHIRAIYAN, J.

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