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Crl.R.C.No.535 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

CORAM:

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

Crl.R.C.No.535 of 2019

and

Crl.M.P.Nos.7285 & 7286 of 2019

M.Krishnaveni

... Petitioner

Vs

Raja

... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records pertaining to the issue of the order dated 26.02.2019 in Criminal Appeal No.77 of 2018 by the learned Additional Sessions Judge, Namakkal in confirming the order passed in C.C.No.208 of 2013 Judicial Magistrate No.I, Namakkal and revise the same and thus acquit the petitioner.

For Petitioner : Mr.D.Ashok Kumar

For Respondent : Mr.K.S.Karthik Raja

ORDER

This Criminal Revision has been filed as against the Judgment dated 26.02.2019 passed in C.A.No.77 of 2018 on the file of the Additional Sessions Judge, Namakkal, thereby confirming the Judgment



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dated 09.11.2018 passed in C.C.No.208 of 2013 on the file of the Judicial Magistrate No.I, Namakkal, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. According to the respondent, the petitioner was doing steel business in the name and style of M/s.Sri Pappathiamman Steels at Thiruchengode Road, Namakkal Town. She borrowed a sum of Rs.7,50,000/- from the respondent on 03.04.2013 at the residence of the respondent in the presence of one V.Ramalingam for her urgent family expenses and business expenses. She also agreed to repay the same within a month. After one month, the respondent demanded to repay the loan, for which the petitioner issued a cheque for a sum of Rs.7,50,000/-. 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.

3. In order to prove the case, the respondent had examined P.Ws.1 and 2 and marked Exs.P1 to P4. On the side of the petitioner, D.W.1 was examined and no document was marked.



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4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence under Section 138 of Negotiable Instrument Act and sentenced her to undergo one year simple imprisonment and to pay a fine of Rs.2,000/- in default, to undergo one 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 cheque was not issued for any legally enforceable debt. No prudent person would lend such a huge amount as a loan without any security or documents. Even according to the respondent, except the cheque, no other documents were executed at the time of alleged loan. Therefore, the respondent failed to discharge his initial burden in order to bring the charge under Section 138 of Negotiable Instrument Act. On the side of the petitioner, her husband was examined as D.W.1. He categorically submitted that no amount was borrowed from the respondent. D.W.1 used to borrow a very meagre amount such as



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Rs.1,000/- and Rs.2,000/- from the respondent. The respondent insisted D.W.1 to borrow the loan from private finance on giving the cheques as security. The cheques were misused by the respondent to initiate the proceedings under Section 138 of Negotiable Instrument Act. Therefore, without considering the facts and circumstances, both the Courts below convicted the petitioner and it is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondent would submit that the petitioner never denied the issuance of cheque and the signature found in the cheque. Therefore, the respondent discharged his initial burden as required under Section 138 of Negotiable Instrument Act. The petitioner failed to rebut the presumption by any material or oral evidence. Therefore, both the Courts below rightly convicted the petitioner and it does not warrant any interference by this court.

7. Heard, Mr.D.Ashok Kumar, learned counsel appearing for the petitioner and Mr.K.S.Karthik Raja, learned counsel appearing for the respondent and perused the materials available on record.



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8. The petitioner borrowed a loan of Rs.7,50,000/- from the respondent on 03.04.2013 for her urgent family expenses and business expenses. She also agreed to repay the same within a month. After one month, the respondent demanded to repay the loan, for which the petitioner issued a cheque for a sum of Rs.7,50,000/-. When the said cheque was presented for collection, the same was returned dishonoured for the reason 'funds insufficient'. After receipt of the statutory notice, the petitioner failed to reply the same. Though she had taken a stand that the respondent would take her for finance to a private financiers, and for such borrowal in turn she used to issue cheque and those cheques were misused by the respondent, the petitioner failed to produce any material evidence to substantiate the said contention. She examined her husband as D.W.1. He also deposed that he used to borrow money from the respondent and used to borrow loan from the private financiers. Therefore, there is nothing to attribute to evidence of D.W.1 to disprove the case of the respondent in order to rebut the presumption. The further stand of the petitioner is that the alleged cheques were stolen by the respondent. Even then, she did not prefer any complaint so far. Only for the purpose of defence, the petitioner had taken such a stand without any



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iota of evidence. Hence, the respondent discharged his initial burden as required under Section 138 of Negotiable Instrument Act and the Courts below rightly presumed under Section 139 of Negotiable Instrument Act. The cheques, which was marked as Ex.P1, were issued for a legally enforceable debt and the Courts below rightly convicted the petitioner. Further, though the miscellaneous petition for suspension of sentence is filed and it is not suspended by this Court, the petitioner had not surrender so far.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision stands dismissed. Consequently, connected miscellaneous petitions are closed.

01.12.2022

Index : Yes/No
Internet : Yes
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To
1. The Additional Sessions Judge,
Namakkal.

2. The Judicial Magistrate No.I,
Namakkal.



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G.K.ILANTHIRAIYAN, J.

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