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Crl.R.C.No.1306 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

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

Crl.R.C.No.1306 of 2019

M.Chitra

... Petitioner

Vs.

K.Arokiyamary

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the Judgment and conviction dated 12.11.2019 made in C.A.No.66 of 2019 (on the file of IInd Additional District and Sessions Judge Erode) and confirming the judgment and conviction dated 04.02.2019 made in S.T.C.No.142 of 2016 on the file Judicial Magistrate, Fast Track No.II, Erode.

For Petitioner : Mr.C.S.Saravanan



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ORDER

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This Criminal Revision Petition has been filed to set-aside the Judgment and conviction dated 12.11.2019 made in C.A.No.66 of 2019 (on the file of IInd Additional District and Sessions Judge Erode) and confirming the judgment and conviction dated 04.02.2019 made in S.T.C.No.142 of 2016 on the file Judicial Magistrate, Fast Track No.II, Erode.

2. Heard Mr.C.S.Saravanan, the learned counsel appearing for the petitioner.

3. 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 the petitioner, borrowed a sum of Rs.3,50,000/- for her urgent expense on 31.07.2015, as a loan. In order to discharge the liability, the petitioner issued post dated cheque on 31.08.2015. It was presented for collection on her inception. However, it dishonored for the reason “Insufficient



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Funds”. After causing legal notice, the respondent lodged a complaint.

4. On the side of the respondent, she was examined as P.W.1 and marked Ex.P1 to Ex.P6. On the side of the petitioner, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced her to undergo one year simple imprisonment and awarded fine of Rs.5,000/-. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed confirming the order passed by the Trial Court.

5. The petitioner raised grounds that the statutory notice was not properly served on the petitioner and as such there is no cause of action to lodge any complaint for the offence under Section 138 of Negotiable Instruments Act. The petitioner was not cross examined as P.W.1. Therefore, she had valid grounds to succeed in the case and seeking permission for fresh trial.



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6. The learned counsel for the petitioner submitted that while pending this revision, the petitioner settled the amount to the respondent. However, the respondent failed to enter into compromise and refused to come before this Court for proper instructions.

7. A perusal of records revealed that the petitioner never denied her signature and issuance of cheque. On receipt of legal notice, the petitioner failed to reply by way of reply notice. Though, several opportunities were given to the petitioner, she failed to cross examine P.W.1. Therefore, the respondent proved her case and the Courts below rightly convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and this Court finds no infirmity or illegality in the orders passed by the Courts below and this petition is liable to be dismissed. If at all the petitioner settled the amount to the respondent, the respondent can very well approach this Court, in the manner known to law.



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8. Accordingly, this Criminal Revision case is dismissed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order
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To

1. The IInd Additional District and Sessions Judge Erode.

2. The Judicial Magistrate, Fast Track No.II, Erode.



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G.K.ILANTHIRAIYAN, J

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