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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

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

Crl.RC.No.72 of 2018

Jayashree ... Petitioner

Versus

T.Senthil ... Respondent

PRAYER: Criminal Revision has been filed under Section 397(1) r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 06.12.2017 passed in CA.No.270 of 2017 on the file of the Principal Sessions Court of Erode confirming the judgment dated 19.09.2017 passed in STC.No.183 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode by allowing the present criminal revision petition.

For Petitioner : Mr.I.C.Vasudevan

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ORDER

This criminal revision has been filed against the judgment dated 06.12.2017 passed in CA.No.270 of 2017 on the file of the Principal Sessions Court of Erode confirming the judgment dated 19.09.2017 passed in STC.No.183 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode.

2. Heard, the learned counsel for the petitioner.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The respondent lodged complaint alleging that on 15.08.2010, the petitioner borrowed a sum of Rs.5,00,000/- for her urgent expenses. In order to discharge the said liability, she issued cheque and the same was presented for collection. However, it was returned dishonoured for the reason “account closed”. After causing statutory notice as contemplated under Section 138 of NI Act, the respondent lodged complaint.

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4. On the side of the respondent, he was examined as PW1 and he marked Ex.P1 to Ex.P5. On the side of the petitioner, nobody was examined and no documents were marked before the trial court. On perusal of oral and documentary evidence, the trial court found the petitioner guilty and sentenced her to undergo one year simple imprisonment and also imposed 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 also dismissed and confirmed the conviction rendered by the trial court.

5. The learned counsel for the petitioner would submit that the cheque was issued for security purpose and the same was misused by the respondent. The loan was borrowed by her husband and the same was duly repaid by him. At that time of borrowal of loan, the cheque was given as security purpose. Even after repayment of the entire amount, the respondent failed to return the same. Therefore, there was no legally enforceable debt to present the cheque for collection. However, the courts below without considering the same, convicted the petitioner for the offence punishable under Section 138 of NI Act.

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6. On perusal of the records, revealed that the petitioner borrowed a sum of Rs.5,00,000/- and in order to repay the same, she issued cheque. The said cheque was presented for collection and the same was returned for the reason 'account closed. However, the submission of the petitioner is completely contradictory since she had taken a specific stand that the cheque was issued for security purpose at the time of borrowal of loan by her husband. Therefore, she never denied the issuance of cheque and signature of the cheque. Further, she also failed to make any statement when she was questioned under Section 313 of Cr.P.C. before the trial court. Further, admittedly there was money transaction between both the petitioner and the respondent herein. Even assuming that when her husband borrowed loan, the cheque was issued as security purpose, even after repayment of the entire loan amount by her husband, no steps had been taken for return of the cheque. In fact, no complaint was also lodged by her husband or by the petitioner herein.

7. That apart, when this Court suspended the sentence, imposed condition that the petitioner shall deposit 50% of the cheque amount before

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the trial court. It is also not complied with and the petitioner also failed to take notice to the respondent even till today. Therefore, the trial court rightly convicted the petitioner under Section 138 of NI Act and also the appellate court rightly confirmed the same. As such, this Court finds no infirmity or illegality in the orders passed by the courts below.

8. Accordingly, this criminal revision is dismissed.

10.10.2022

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

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To
1.The Principal Sessions Court of Erode
2.The Judicial Magistrate Court (Fast Track Court No.II),
Erode

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10.10.2022

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