



WEB COPY



CrI.R.C.No.1127 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

CORAM:

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

CrI.R.C.No.1127 of 2018

Thilagavathy

...Petitioner

-Vs-

I.J.Mary @ J.Phillomina Mary

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the order dated 20.07.2018 in C.A.No.130 of 2017 passed by the learned Principal Sessions Judge, Tiruvallur, confirming the judgment of the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, dated 09.08.2017 in S.T.C.No.165 of 2015.

For Petitioner : Mr.Karthikeyan

For Respondent : No appearance

ORDER

This revision has been filed as against the judgment passed in C.A.No.130 of 2017 dated 20.07.2018 on the file of the Principal Sessions Judge, Tiruvallur, thereby confirming the judgment passed in S.T.C.No.165 of 2015 dated 09.08.2017 on the file of the Judicial Magistrate (Magisterial Level),



CrI.R.C.No.1127 of 2018

Ambatur, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instrument Act.

3. The case of the respondent is that the petitioner borrowed a sum of Rs.10,45,600/- as a hand loan for her family expenses, children's education and for medical expenses from 2011 to 2013. On 09.12.2014, the petitioner issued a receive acknowledgement of said loan and issued four post dated cheques towards her liabilities. When the respondent presented three cheques out of four cheques for collection the same was returned for the reason "Insufficient Funds". Thereafter, the respondent caused statutory notice to the petitioner and lodged a complaint.

4. On the side of the respondent PW1 was examined and Exs.P1 to 8 were marked and on the side of the petitioner no one was examined and Exs.D1 to 3 were marked.

5. On perusal of oral and documentary evidence, the trial Court found the



petitioner guilty for the offence under Section 138 of NI Act and sentenced her to undergo five months simple imprisonment and also awarded compensation of Rs.6,80,000/- payable by the petitioner to the respondent in default to undergo one month simple imprisonment. Aggrieved by the same the petitioner preferred an appeal and the same was dismissed. Hence the revision.

6. The learned counsel for the revision petitioner would submit that the alleged cheques were given only as a security for the loan obtained from the petitioner before the police persons under coercion. That apart, during the cross examination, the petitioner admitted that he received a sum of Rs.2,20,000/-, pending complaint, and without considering the same both the Courts below convicted the petitioner. Further, the respondent failed to prove the date of borrowal of loan and the respondent vaguely pleaded that from the year 2011 to 2013 on various dates the petitioner had borrowed various sums to the tune of Rs.10,45,600/-. Hence, he prays for acquittal.

7. Heard the learned counsel for the petitioner and no one appeared on behalf of the respondent and perused the entire materials available on record.

8. It is seen that the petitioner is the accused in the complaint lodged for the offence under Section 138 of NI Act. From the year 2011 to 2013 on various



CrI.R.C.No.1127 of 2018

dates the petitioner had borrowed various sums to the tune of Rs.10,45,600/- from the respondent. The petitioner executed a receive acknowledgement for said loan on 09.12.2014 and on the same day, the petitioner issued four post-dated cheques for a sum of Rs.10,45,600/-. Out of four cheques, the respondent presented only three cheques for collection and the said cheques were returned for the reason “Insufficient Funds”. Immediately, the respondent caused statutory notice, which was marked as Ex.P7, the same was duly received by the petitioner by acknowledgement card, which was marked as Ex.P8.

9. On receipt of the said notice, the petitioner failed to reply and failed to rebut the presumption arisen out of the cheques, which were marked as Ex.P1 to 3. Therefore, the respondent discharged his initial burden arising out of Section 138 of NI Act. However, the petitioner failed to rebut the same as contemplated under Section 139 of NI Act except marking the documents as Exs.D1 to 3. Though, the petitioner examined the respondent nothing was extracted to rebut the presumption. Therefore, the petitioner failed to produce preponderance of probabilities to rebut the legal presumption, which is discharged by the respondent.

10. Pending trial the complaint was referred before the Lok Adalat and



Crl.R.C.No.1127 of 2018

before the Lok Adalat a part of amount was settled by the petitioner and the same was admitted by the respondent. Therefore, the trial Court rightly deducted the amount which was already received by the respondent and awarded compensation only to the tune of Rs.6,80,000/- out of Rs.9,00,000/-. Hence, the Appellate Court rightly confirmed the conviction imposed by the trial Court and this Court finds no infirmity or illegality in the judgments passed by the Courts below.

11. Accordingly, the criminal revision case stands dismissed.

21.11.2022

Index : Yes/No
Speaking/Non Speaking order
ata

G.K.ILANTHIRAIYAN. J.

ata

To

1. The Principal Sessions Judge,
Tiruvallur.



CrI.R.C.No.1127 of 2018

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

CrI.R.C.No.1127 of 2018

21.11.2022