IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

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

Crl.R.C.No.1180 of 2018

Cathirine Mary Shanthini .... Petitioner

Vs

V.Hari .... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to call for the records in C.A.No.291 of 2017 on the file of the XVII Additional City Civil Court at Chennai by confirming the Judgment dated 31.08.2017 made in C.C.No.3328 of 2011 on the file of the Metropolitan Magistrate Court, FTC No.IV, George Town, Chennai and set aside the Judgment rendered in Crl.A.No.291 of 2017 on 07.08.2018.

For Petitioner : Mr.S.Venkatesh

For Respondent : Dr.A.Thiyagarajan
Senior Counsel
for Mr.S.Aravind Raj

ORDER

This Criminal Revision Case is directed as against the Judgment dated 07.08.2018 passed in Crl.A.No.291 of 2017 on the file of the XVII

Additional Judge, City Civil Court, Chennai, thereby confirming the Judgment dated 31.08.2017 passed in C.C.No.3328 of 2011 on the file of the Metropolitan Magistrate Court, Fast Track Court No.IV, George Gown, Chennai, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instrument Act.

2. The petitioner is an accused in the complaint lodged by the respondent. The crux of the complaint is that the petitioner borrowed a sum of Rs.3,25,000/- on 10.02.2011 for her business purpose, promising to repay the said amount within a short period. In order to repay the said amount, she issued a cheque for a sum of Rs.3,25,000/-. When the 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. On the side of the respondent, he examined himself as P.W.1 and marked Exs.P1 to P4. On the side of the petitioner, no one was examined and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instrument Act and she was sentenced to undergo six months simple imprisonment and also ordered a compensation of Rs.3,25,000/-, in default to undergo a further period of 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.

5. The learned counsel appearing for the petitioner would submit that there was no legally enforceable debt in favour of the respondent. The cheque was not at all issued towards any liability. It was obtained by any coercion**.** The petitioner borrowed only a sum of Rs.30,000/- and the cheque was issued for security purpose, which was misused by the respondent herein. Though, the petitioner did not reply for the statutory notice, she categorically rebutted the presumption by her statement under Section 313 of Cr.P.C. She made a specific statement that the alleged cheque was issued only for security purpose and not for any legally enforceable debt.

6. He further submitted that the defacto complainant had no source of income to lend such a huge amount of Rs.3,25,000/-. In fact, he categorically admitted that he was drawing only a sum of Rs.12,000/- as monthly salary and therefore he would not be in a position to lend such huge amount. While being so, except the cheque, the respondent failed to prove his case beyond any reasonable doubt.

7. The learned Senior Counsel appearing for the respondent submitted that though the petitioner had taken a specific stand that the cheque was obtained under coercion, neither the petitioner replied so on receipt of the statutory notice nor did she lodge any complaint against the respondent. Even after filing the complaint, she did not prove before the Trial Court the presumption under Section 139 of Negotiable Instrument Act. Therefore, the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

8. Heard, Mr.Venkatesh, learned counsel appearing for the petitioner and Dr.A.Thiyagarajan, learned Senior Counsel appearing for the respondent and perused the materials available on record.

9. The petitioner borrowed a sum of Rs.3,25,000/-. In order to repay the said amount, he issued a cheque for a sum of Rs.3,25,000/-. When it was presented for collection, the same was returned dishonoured for the reason 'funds insufficient'. The respondent caused statutory notice, it was marked as Ex.P3 and the same was duly received by the petitioner, which was marked as Ex.P4. Though the petitioner had taken a specific stand that the alleged cheque was obtained under coercion, the petitioner did not lodge any complaint so far, even after receipt of notice and even after lodgement of complaint.

10. According to the petitioner, he borrowed only a um of Rs.30,000/-. While borrowing the said amount, she issued a cheque for security purpose, which was misused by the respondent. However, the petitioner failed to substantiate the said contention by any piece of evidence. That apart, the respondent in his cross examination, categorically deposed that after taking chit amount of Rs.2,00,000/- and pledged the jewels, he had lent a sum of Rs.3,25,000/- to the petitioner. However, the respondent discharged his initial burden as contemplated under Section 139 of Negotiable Instrument Act and as such, the Courts

below rightly convicted the petitioner. Since as per Section 118 and 139 of Negotiable Instrument Act, the cheque was issued for legally enforceable debt, the initial presumption would act in favour of the respondent, unless the contrary is proved. Therefore, the Courts below rightly convicted the petitioner.

11. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision Cases stands dismissed.

08.11.2022

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To
1. The XVII Additional Judge,
City Civil Court, Chennai.

2. The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.

G.K.ILANTHIRAIYAN. J,

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Crl.R.C.No.1180 of 2018

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