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Crl.RC.No.1370 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

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

Crl.RC.No.1370 of 2018

V.Rajamani ... Petitioner/accused

Versus

Damodharan ... Respondent

PRAYER: Criminal Revision has been filed under Section 397(1) and 401 of the Code of Criminal Procedure to set aside the judgment dated 17.07.2018 passed by the learned V Additional District and Sessions Judge, Coimbatore in CA.No.112 of 2016 confirming the conviction and sentence of one year simple imprisonment and to pay a fine amount of Rs.10,000/- in default to undergo two months simple imprisonment and also direct the petitioner to pay compensation of Rs.16,00,000/- to the respondent within one month imposed by the learned Judicial Magistrate, Fast Track Court No.II at Magisterial Level, Coimbatore in CC.No.447 of 2011 by judgment dated 12.08.2016.



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For Petitioner : Mr.L.Mouli
For Respondent : No appearance
(Not ready in notice)

ORDER

This criminal revision is filed against the judgment dated 17.07.2018 passed by the learned V Additional District and Sessions Judge, Coimbatore in CA.No.112 of 2016, thereby confirmed the conviction and sentence rendered by the learned Judicial Magistrate, Fast Track Court No.II at Magisterial Level, Coimbatore in CC.No.447 of 2011 dated 12.08.2016, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The crux of the complaint is that the accused is running a business in the name and style of Mrs.Rajamani Knitting Mill and she is the proprietrix and engaged in manufacturing banian items. The complainant is doing finance business. While being so, on 21.07.2009, the accused approached the complainant to borrow a sum of Rs.19,00,000/-. While borrowing the said amount, she also



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executed promissory note in favour of the complainant. Accordingly, the accused agreed to pay interest at 12% per annum. The accused had paid only a sum of Rs.4,00,000/- by way of cheque and in respect of the remaining amount, the accused issued cheque for a sum of Rs.16,00,000/-, which was presented for collection. However, it was returned dishonoured with endorsement 'funds insufficient'. After causing statutory notice, the complainant filed complaint for the offence punishable under Section 138 of NI Act.

3. On the side of the complainant, he examined PW1 to PW3 and marked Ex.P1 to Ex.P11. On the side of the petitioner, she examined DW1 to DW3 and marked Ex.D1 to Ex.D9. On perusal of oral and documentary evidence, the trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced to undergo one year simple imprisonment with fine of Rs.10,000/-. The trial court also ordered compensation of the cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the conviction rendered by the trial court.



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4. The petitioner raised ground that she examined DW1 to DW3 and marked Ex.D1 to Ex.D9 to rebut the presumption arising out of Section 139 of NI Act. Even then, the courts below convicted the petitioner. The respondent failed to prove the execution of pronote which was marked as Ex.P1 in order to prove that it is a legally enforceable debt. The respondent also admitted that he is doing money-lending business, that too without licence under the Tamilnadu Money Lenders Act, 1957. However, all the facts were not considered by the trial court and convicted the petitioner.

5. Heard, the learned counsel for the petitioner.

6. On perusal of records, revealed that the petitioner is the proprietrix of M/s.Rajamani Knitting Mills. She was engaged in manufacture of banian items. While being so, for her business needs, she borrowed a sum of Rs.19,00,000/- from the respondent. The said amount was paid through RTGS and on the same day, the petitioner also executed pronote which was marked as Ex.P1. Thereafter, she made part payment to the tune of



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Rs.4,00,000/- by way of cheque. It was honoured and subsequently she issued cheque for a sum of Rs.16,00,000/- and when it was presented for collection, it was returned for the reason 'funds insufficient'. Immediately, the respondent caused legal notice dated 31.12.2009, which was marked as Ex.P4. In support of his claim, the respondent also marked statement of accounts of the accused, which was marked as Ex.P6. Though the petitioner examined DW1 to DW3, nothing was elicited to disprove the case of the respondent herein. The accused/ petitioner can substantiate her case by preponderance of probabilities. She can rely upon direct evidence or circumstantial evidence or on presumptions of law or fact to rebut the initial evidential burden. Once such rebuttal evidence is adduced, the burden would again shift back to the complainant who has the legal burden to prove such fact. However, there is no other probable evidence to disbelieve the case of the respondent. Therefore, the courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the orders passed by the courts below.

7. Accordingly, this criminal revision is dismissed and the judgments of conviction and sentence passed by the Courts below are hereby



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confirmed. The trial Court is directed to take steps to secure the petitioner for the purpose of sentencing her to undergo the conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C. However, if the petitioner settles the entire cheque amount, she is at liberty to approach this Court for proper relief.

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

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To

- 1.The learned V Additional District and Sessions Judge,
Coimbatore
- 2.The learned Judicial Magistrate,
Fast Track Court No.II at Magisterial Level, Coimbatore

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