



Crl.RC.No.1431 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

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

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R.Jayanthi

...

Petitioner

Versus

N.Sundaramoorthy

...

Respondent

PRAYER:

Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the order in CA.No.7 of 2018 passed by the learned XVIII Additional Sessions Judge, Chennai dated 02.11.2018 confirming the judgment in CC.No.4769 of 2015 dated 20.11.2017 passed by the learned Metropolitan Magistrate, FTC-III at Saidapet and to acquit the petitioner.

For Petitioner : Mr.S.Shankar



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For Respondent : Mr.T.Dhanasekaran

ORDER

This criminal revision is directed as against the judgment in Crl.A.No.7 of 2018 dated 02.11.2018 on the file of the learned XVIII Additional Sessions Judge, Chennai, thereby confirmed the order in CC.No.4769 of 2015 dated 20.11.2017 on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, 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 respondent is the absolute owner of the property bearing No.2A, Mahalakshmi Flats, 2B Arunachalam Road, Saligramam, Chennai. The petitioner and her husband were the tenants in respect of the subject property based on the oral agreement. As per the oral agreement, the petitioner agreed to pay a sum of Rs.17,500/- as monthly rent and advance



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of Rs.1,00,000/-. On the said oral agreement, on the date of such oral agreement, the petitioner paid a sum of Rs.20,000/- as earnest amount as cash and agreed to pay the remaining amount of Rs.80,000/- in due course. The petitioner also issued cheque dated 01.04.2015 for the said sum. It was presented for collection and the same was returned dishonoured for the reason 'insufficient funds' and 'drawers signature is incomplete'. Hence, the respondent caused statutory notice and lodged complaint.

3. On the side of the respondent, he examined PW1 and marked Ex.P1 to Ex.P4. On the side of the petitioner, no one was examined and no documents were marked. 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 her to undergo simple imprisonment for a period of six months and directed to pay cheque amount as compensation. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the judgment passed by the trial court.



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4. The learned counsel for the petitioner would submit that even according to the respondent, the petitioner issued cheque for the remaining rental advance as per the oral agreement for rent. Therefore, there was no legally enforceable debt to attract offence under Section 138 of NI Act. There was no rental arrears and when the petitioner was inducted as a tenant, she paid a sum of Rs.20,000/- as advance by cash and the remaining amount was paid through the alleged cheque. After eleven months, she also vacated the premises and as such, there was absolutely no legally enforceable debt in favour of the respondent to encash the cheque to attract the offence under Section 138 of NI Act.

5. Per contra, the learned counsel for the respondent submitted that the petitioner agreed to pay a sum of Rs.1,00,000/- as advance. On the date of oral agreement, she paid a sum of Rs.20,000/- and for the remaining amount, the petitioner issued cheque. The signature found in the cheque and also the issuance of cheque were never denied by the petitioner. In fact, after receipt of statutory notice, the petitioner did not even choose to reply. Therefore, the respondent discharged his initial burden as required under



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Section 138 of NI Act. Hence, the courts below rightly convicted the petitioner for the offence punishable under section 138 of NI Act.

6. Heard, Mr.S.Shankar, the learned counsel for the petitioner and Mr.T.Dhanasekaran, the learned counsel for the respondent.

7. Admittedly, the petitioner was inducted as a tenant by oral agreement for the property bearing No.2A, Mahalakshmi Flats, 2B Arunachalam Road, Saligramam, Chennai. The petitioner agreed to pay a sum of Rs.17,500/- as monthly rent and paid advance amount of Rs.20,000/-. In order to pay the remaining advance amount, the petitioner issued cheque and the same was returned dishonoured for the reason 'funds insufficient'.

8. Now the only point for consideration is that whether the cheque was issued for any legally enforceable debt. The petitioner did not deny the fact that the cheque was issued by her and also did not deny her signature found in the cheque. Even assuming that the petitioner agreed to pay a sum



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of Rs.1,00,000/- as advance, for issuance of the said cheque, there was no consideration passed in favour of the petitioner. Even according to the respondent, the cheque was issued for the remaining advance amount of Rs.80,000/- as per the oral agreement. That apart, the petitioner vacated the premises by force. It is not the case of the respondent that the petitioner was in arrears of rent. It is also not the case of the respondent that the cheque was issued for rental arrears. It is relevant to extract the provision under Section 138 of NI Act.

“138 Dishonour of cheque for insufficiency, etc., of funds in the account — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be



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punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both”

Thus, it is clear that on account of discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, shall be deemed to have committed offence under Section 138 of NI Act.

9. In the case on hand, the petitioner issued the cheque towards the remaining advance amount. It was nothing but security deposit and as such there was no legally enforceable debt in favour of the respondent herein. Therefore, the respondent failed to substantiate that the alleged cheque was issued for any legally enforceable debt. Unfortunately, the courts below without considering these aspects and mechanically convicted the petitioner and it cannot be sustained against the petitioner.

10. In view of the above, this Criminal Revision is allowed and the conviction and sentence imposed in CA.No.7 of 2018 dated 02.11.2018 on the file of the learned XVIII Additional Sessions Judge, Chennai and in CC.No.4769 of 2015 dated 20.11.2017 on the file of the learned



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Metropolitan Magistrate, FTC-III at Saidapet are hereby set aside. The petitioner is acquitted of all charges in CC.No.4769 of 2015 on the file of the learned Metropolitan Magistrate, FTC-III at Saidapet. Bail bond, if any executed, shall stand cancelled. Accordingly, the petitioner is permitted to withdraw whatever the amount deposited to the credit of the trial court by way of proper application. It is made clear that the trial court is directed to permit the petitioner to withdraw the same without ordering notice to the respondent.

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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned XVIII Additional Sessions Judge,
Chennai
- 2.The learned Metropolitan Magistrate,
FTC-III at Saidapet

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