



WEB COPY



Crl.R.C.No.1458 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

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

Crl.R.C.No.1458 of 2018

and

Crl.M.P.Nos.17071, 17072 & 17076 of 2018

L.Malliga

.... Petitioner

Vs

S.Sudhamathi

.... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the conviction imposed in the Judgment dated 10.09.2018 made in C.A.No.199 of 2017 of the file of the learned I Additional District Sessions Judge, Coimbatore modifying the judgment dated 27.06.2017 made in C.C.No.798 of 2014 on the file of the learned Judicial Magistrate Fast Track Court No.1, Coimbatore.

For Petitioner : M/s.N.Ponraj

For Respondent : Mr.B.Vasudevan

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 10.09.2018 made in C.A.No.199 of 2017 of the file of the I Additional District Sessions Judge, Coimbatore, thereby modifying



Crl.R.C.No.1458 of 2018

the Judgment dated 27.06.2017 made in C.C.No.798 of 2014 on the file of the Judicial Magistrate Fast Track Court No.1, Coimbatore, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instrument Act. The case of the respondent is that the petitioner borrowed a sum of Rs.3,00,000/- on 02.04.2013 for her family expenses and agreed to pay interest at the rate of 12% per annum. However, she failed to pay the interest after some months. Therefore, the respondent made demand and on the said demand, the petitioner issued a cheque dated 12.02.2014 for a sum of Rs.3,36,000/-, in order to repay the loan borrowed by her. When it 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, P.Ws.1 and 2 were examined and marked Exs.P1 to P9. On the side of the petitioner, D.Ws.1 and 2 were examined and marked Exs.D1 and D2.

4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section



CrI.R.C.No.1458 of 2018

138 of Negotiable Instrument Act and she was sentenced to undergo six months simple imprisonment and also awarded a compensation to the tune of Rs.3,36,000/-. Aggrieved by the same, the petitioner preferred an appeal and the Appellate Court while confirming the conviction, modified the sentence imposed by the Trial Court. Hence, this revision.

5. The learned counsel for the petitioner raised grounds that as per Section 269SS of the Income Tax Act any advance taken by way of any loan of more than Rs.20,000/- was to be made by way of account payee cheque only. Section 271D of the Income Tax Act says that non-compliance of Section 269SS is penal in nature. Therefore, there is absolutely no possibility to lend money to the tune of Rs.3,00,000/- as loan, that too without execution of any document. Except the cheque, no other supporting document was filed by the respondent to prove his case.

6. Heard, Mr.N.Ponraj, learned counsel appearing for the petitioner and Mr.B.Vasudevan, learned counsel appearing for the respondent and perused the materials available on record.

7. A perusal of the records reveals that the petitioner borrowed a sum of Rs.3,00,000/- as loan. In order to repay the said amount, the petitioner issued a cheque with interest. The petitioner caused notice dated 05.04.2014, which was marked as Ex.P5, thereby called upon the



Crl.R.C.No.1458 of 2018

respondent to cease and desist from transferring the instruments and documents which were give to him as security for the repayment of the said amount of Rs.1,50,000/- and inspite of the legal notice, if the respondent transfers the said instruments and documents to third parties, she will be constrained to initiate civil and criminal proceedings against the respondent. On receipt of the same, the respondent sent reply notice dated 10.04.2014, which was marked as Ex.P6, thereby called upon the petitioner to repay the amount, which was borrowed by her, with interest totalling a sum of Rs.3,36,000/- and subsequent interest, failing which he will take appropriate action as against the petitioner. Thereafter, the said cheque was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. It was duly informed to the respondent on 17.04.2014. After return of the cheque, the respondent caused statutory notice, which was marked as Ex.P3 dated 30.04.2014. On receipt of the said notice, the petitioner sent reply notice dated 19.05.2014, which was marked as Ex.D1. In support of his case, the respondent was examined as P.W.1 and the Manager of the Bank was examined as P.W.2.

8. Even in the reply notice, the petitioner never denied her signature and never denied the issuance of the cheque. Therefore, the



Crl.R.C.No.1458 of 2018

respondent lodged a complaint and the mandatory requirements as contemplated under Section 138 of Negotiable Instrument Act and the initial presumption is available in favour of the respondent herein. The presumption contemplated under Section 139 of the Negotiable Instrument Act is drawn in favour of the respondent, until the contrary is proved. It is presumed that the cheque in the case was issued for a legally enforceable debt or liability. Though the presumption is rebuttable in nature, the petitioner failed to rebut the same by preponderance of probability.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. However, the learned counsel for the petitioner would submit that if the petitioner settles the entire amount in favour of the respondent, she is at liberty to approach this Court to set aside the conviction by filing appropriate petition for appropriate relief as held in the case of ***Ramgopal and others vs. The State of Madhya Pradesh reported in 2021 (6) CTC 240.***

10. In the result, this Criminal Revision Case stands dismissed.



Crl.R.C.No.1458 of 2018

Consequently connected miscellaneous petitions are closed.

WEB COPY

20.10.2022

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

To

1. The I Additional District Sessions Judge, Coimbatore .
2. The Judicial Magistrate, Fast Track Court No.1, Coimbatore.

G.K.ILANTHIRAIYAN. J.

Lpp



WEB COPY



Crl.R.C.No.1458 of 2018

Crl.R.C.No.1458 of 2018

20.10.2022