



Crl.R.C(MD)No.83 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.83 of 2018

and

Crl.M.P(MD)Nos.1081 and 1082 of 2018

T.Saroja

...Petitioner

Vs.

Shanmugasundaram

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment in C.A.No.8 of 2017 on the file of the II Additional District & Sessions Judge, Thanjavur, dated 21.12.2017, confirming the conviction and sentence of three months simple imprisonment and direction to pay compensation of Rs.1,15,000/- under Section 357 of Cr.P.C. r/w 117 of Negotiable Instruments Act, within two months from the date of the judgment, in default, to undergo three weeks simple imprisonment imposed by the judgment, dated 09.12.2016 in S.T.C.No.60 of 2014 on the file of the Fast Track Court at Magisterial Level, Thanjavur.

For Petitioner : Mr.T.A.Ebenezer
For Respondent : Mr.P.Vadivel



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ORDER

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The Petition has been filed against the judgment in C.A.No.8 of 2017 on the file of the II Additional District & Sessions Judge, Thanjavur, dated 21.12.2017, confirming the conviction and sentence by the judgment, dated 09.12.2016 in S.T.C.No.60 of 2014 on the file of the Fast Track Court at Magisterial Level, Thanjavur.

2.The case of the respondent is that the petitioner has borrowed a sum of Rs.1,00,000/- from the respondent on 12.10.2012 and Rs.75,000/- on 17.07.2013. The petitioner has also agreed to repay the said loan with interest at 24% per annum. On 29.03.2014, the accused paid a sum of Rs.75,000/- towards the repayment of said loan amount and assured to pay the balance amount within four months. When the respondent demanded the accused to repay the balance amount of Rs.1,64,183/-, she gave a cheque to the tune of Rs.1, 50,000/- towards the discharge of the entire loan amount after negotiation. The said cheque was presented for collection and the same was returned for the reason 'payment stopped' by the drawer. The complainant issued a lawyer notice on 10.09.2014, calling upon the accused to repay the amount due under the returned cheque. The accused received the said



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notice on 12.09.2014, but has not paid any amount. Hence, the respondent lodged a complaint.

3.The respondent had examined himself as PW1 and marked five documents as Ex.P1 to Ex.P5. The petitioner had examined herself as DW1 and marked one document as Ex.R1. On perusal of oral and documentary evidence, the trial Court found that the petitioner/accused guilty for the offence under Section 138 of Negotiable Instrument Act and sentenced to undergo simple imprisonment for a period of three months and to pay Rs.1,15,000/- towards compensation. Aggrieved by the same, the petitioner preferred an appeal and the Appellate Court has also dismissed the appeal and confirmed the judgment passed by the trial Court. Hence, the present revision.

4.The learned counsel for the petitioner submitted that the petitioner deposited a sum of Rs.80,000/- (Rupees Eighty Thousand only) to the credit of S.T.C.No.60 of 2014 before the Fast Track Court at Magisterial Level, Thanjavur, while suspending her sentence. He further submitted that even before the trial Court she also deposited another sum of Rs.30,000/-. The Courts below also concluded that the respondent



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failed to calculate the interest properly and concluded and awarded compensation only to the tune of Rs.1 lakh. Therefore, the petitioner has paid the entire amount, which was borrowed by her from the respondent.

5. On perusal of records, though the petitioner had taken specific stand that before the trial Court, she had paid Rs.30,000/-, she did not receive any acknowledgment for the said payment. While pending this revision, she had paid a sum of Rs.80,000/- and it is lying in the account of trial Court. Further, the learned counsel for the petitioner would submit that in order to show her *bona fied*, she ready and willing to deposit the remaining amount of Rs.20,000/- as full and final settlement. Considering the submission, this Court is inclined to set aside the sentence alone on payment of remaining cheque amount of Rs. 20,000/- to the respondent herein.

6. In view of the above, the conviction under Section 138 of Negotiable Instrument, is hereby confirmed. Insofar as the sentence is concerned, it is set aside, on condition that the petitioner shall pay a sum of Rs.20,000/- directly to the respondent by way of Demand Draft on or before 27.04.2023 and produced acknowledgment before the trial Court.



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If the petitioner failed to pay the said amount, the sentence imposed by the Courts below is hereby restored and the trial Court is directed to pass appropriate orders to secure the petitioner to serve the remaining period of sentence.

7.The respondent is permitted to withdraw, which was already deposited by the petitioner to the credit of trial Court in S.T.C.No.60 of 2014 on the file of the Fast Track Court at Magisterial Level, Thanjavur.

8.Accordingly, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

24.03.2023

NCC : Yes/No
Index : Yes / No

vsd

To

- 1.The II Additional District & Sessions Judge,
Thanjavur.
- 2.The Fast Track Court at Magisterial Level,
Thanjavur.



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