



Crl.RC No.440 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.440 of 2023

Amutharani

...Petitioner/Appellant/Sole accused

Vs.

Palanisami

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to set aside the Judgment passed in STC No.1173 of 2019 dated 28.02.2022 on the file of the Judicial Magistrate No.1, Sankagiri confirmed in CA.No.36 of 2023 dated 16.02.2023 on the file of the 1st Additional District and Sessions Court Salem.

For Petitioner : Mr.T.Muruganantham

For Respondent : No appearance

ORDER

The revision challenges the Judgments of conviction and sentence imposed on the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act, 1881.



2. It is the case of the respondent/complainant that the petitioner/accused had borrowed a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) in the year 2015; that the petitioner had issued a cheque for Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) towards discharge of his liability; that the cheque when presented for collection on 20.06.2015 was returned with an endorsement “Account Closed”; and that in spite of statutory notice, the petitioner did not make any payment.

3. The respondent had filed the complaint before the learned Judicial Magistrate No.I, Sankagiri, in S.T.C.No.1173 of 2019. During trial, the respondent examined himself as P.W.1 and marked six documents as Exs.P1 to P6. The petitioner examined two witnesses as D.W.1 and D.W.2 and marked four documents as Exs. D1 to D4.

4. The trial Court held that the respondent had established that the cheque was issued by the petitioner for a legally enforceable debt; and hence convicted the petitioner and sentenced her to undergo one year of simple imprisonment and to pay a compensation equivalent to the cheque



amount, i.e., Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only).

The appellate Court confirmed the finding of guilt and sentence imposed by the trial Court. Hence, the revision.

5. Heard Mr.T.Muruganantham, the learned counsel for the petitioner and perused the materials available on record.

6. Mr. T. Muruganantham, the learned counsel for the petitioner, would submit that the petitioner had lodged a complaint against the respondent alleging that he had received blank papers and cheques under coercion and that in spite of repayment of the loan, he was harassing the petitioner; that the petitioner had also marked Ex.D4, the copy of the report of the police on the complaint given by the petitioner; that the petitioner therefore is not liable to pay the cheque amount; that the petitioner had rebutted the statutory presumption; and that the Courts below had ignored vital evidence on record and erroneously convicted the petitioner.



7. Though notice has been served on the respondent and a learned counsel had entered appearance, there was no representation for the respondent on 14.11.2024, 21.11.2024, 28.11.2024, 10.12.2024 and 12.12.2024.

8. It is seen from the Judgments of the Courts below that the respondent had examined himself as P.W.1 and marked exhibits Exs.P1 to P6. The petitioner had examined herself as D.W.2 and the Bank Manager as D.W.1, besides marking exhibits D.W.1 to D.W.4. The documents produced on the side of the petitioner, namely Ex.D2, would show that the account from which the cheque was drawn was closed in the year 2013. However, even as per the document relied upon by the petitioner, namely Ex.D4, the principal amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) is due and payable by the petitioner. The fact that the cheque was returned for the reason “Account closed” would not come to the aid of the petitioner, as it is well settled, the said reason for return of the cheque would also come within the ambit of Section 138 of the NI Act.



9. Both the Courts below had found that the case of the respondent that the cheque was used for a legally enforceable debt has been established. The respondent had also further established that a statutory notice was issued and in spite of the statutory notice, the petitioner did not make any payment. The concurrent findings of fact by the Courts below are not perverse so as to warrant an interference in this revision. However, considering the fact that the petitioner is a lady and she is willing to settle the amount with the respondent, this Court is of the view that the sentence alone can be modified.

10. Accordingly, the sentence of imprisonment imposed on the petitioner/appellant/accused by the Courts below is set aside. The compensation directed to be paid is also set aside. Instead, a fine of Rs.2,80,000/- (Rupees Two Lakhs Eighty Thousand only) is imposed on the petitioner and in default to suffer simple imprisonment for a period of six months. Out of the said fine, a sum of Rs. 2,70,000/- (Rupees Two Lakhs Seventy Thousand only) shall be paid as compensation to the respondent. The amount deposited by the petitioner pending the appeal would be construed as payment towards fine and shall be paid to the respondent forthwith. The petitioner shall pay the remaining fine amount



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within a period of four weeks from the date of receipt of a copy of this order.

11. With the above modification, the Criminal Revision Petition stands partly allowed.

12.12.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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To

1. The I Additional District and Sessions Judge,
Salem.
2. The Judicial Magistrate No.1,
Sankagiri.



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SUNDER MOHAN, J.

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