



Crl.R.C.No.1388 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.1388 of 2024

and

Crl.M.P.No.11753 of 2024

Vidhyalakshmi

... Petitioner

Vs.

Selvaraj

... Respondent

PRAYER: Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the judgment and order in Criminal Appeal No.95 of 2018 dated 14.08.2018 on the file of the learned II Additional District Sessions Judge, Erode confirming the judgment and order passed by the learned Judicial Magistrate (Fast Track Court No.II), Erode in S.T.C.No.1 of 2013 dated 12.02.2018 and acquit the petitioner herein from the charges.

For Petitioner : Ms.M.Thenmozhi – No appearance

For Respondent : Mr.S.Thirukumaran – No appearance

ORDER

This Criminal Revision has been filed to set aside the judgment and order in Criminal Appeal No.95 of 2018 dated 14.08.2018 on the file of the



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learned II Additional District Sessions Judge, Erode confirming the judgment and order passed by the learned Judicial Magistrate (Fast Track No.II), Erode in S.T.C.No.1 of 2013 dated 12.02.2018 and acquit the petitioner herein from the charges.

2.When the matter was taken up for hearing on 22.08.2024, there was no representation for the petitioner. Hence, in order to give one more opportunity to the petitioner to argue the case, the matter was directed to be listed on 23.08.2024 under the caption 'For Dismissal'. Today, when the matter is called, again there is no representation for the petitioner as well as respondent either in person or through counsel. Hence, this Court on the materials available on record passing the following order on merits.

3.The petitioner/accused in S.T.C.No.1 of 2013 was convicted by the trial Court by judgment dated 12.02.2018 for offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year



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rigorous imprisonment and to pay a fine of Rs.3,000/-. Aggrieved against the same, the petitioner preferred an appeal before the II Additional District Sessions Judge, Erode in Crl.A.No.95 of 2018. The learned Sessions Judge, by judgment dated 14.08.2018, dismissed the appeal confirming the conviction and sentence of the trial Court, against which, the present revision has been filed.

4.The gist of the case is that the respondent/complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against the petitioner on 10.06.2012. The petitioner for her business requirement borrowed a loan of Rs.2,00,000/- from the petitioner and in discharge of the said liability, the petitioner handed over a cheque bearing No.344835 dated 10.07.2012 for Rs.2,00,000/- drawn on State Bank of India, Erode Branch. When the cheque was presented to the bank on 04.09.2012, the same was returned for the reason 'funds insufficient'. Thereafter, on 20.09.2012, statutory notice issued and the same was refused and returned



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with an endorsement as “Not claimed – returned to sender” on 25.09.2012.

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Thereafter, following the statutory procedure complaint filed. The complainant examined as PW1, marked Exs.P1 to P4. Ex.P1 is the cheque, Ex.P2 is the return memo, Ex.P3 is the statutory notice and Ex.P4 is the returned cover.

5.The grounds raised by the petitioner herein is that the order of the trial Court is cryptic, illogical and not based on the factual and legal aspects. The Lower Court erred in accepting the evidence of the complainant, it had also erred in placing the burden of establishing the innocence on the petitioner/accused. The judgment passed by the Court below are erroneous not advertng to the principles of law governed under Section 138 of the Negotiable Instruments Act. During trial, PW1 refused to answer with regard to the signature in the cheque and contents of the cheque, which are in different colour, which would show that a cheque has been filled without authority and presented for encashment. Further it is stated that Ex.P1 is only



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a security cheque and not issued for any discharge of liability. In support of her contention, the petitioner relied on the decision in the case of *A.R.Chellappan vs. A.R.E.Thirugnanam* reported in 2018(1) DCR 516. It is the petitioner's husband, who handed over the cheque to the respondent for wreak vengeance of their family disputes and not the petitioner, which fact has not been considered by the trial Court. Hence, the present revision has been filed.

6.On perusal of the trial Court judgment it is seen that respondent/complainant examined himself as PW1. He clearly narrated about the petitioner approaching the respondent, seeking loan and handing over of cheque/Ex.P1 in discharge of the liability. After getting instructions from the petitioner, the cheque was deposited, got dishonoured. Thereafter statutory notice issued. From the returned postal cover/Ex.P4, it is seen that there is an endorsement "Not claimed – returned to sender". The postal address available in the complaint and the cover are one and the same. It is seen that the



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petitioner is employed as a Secondary Grade teacher in Government Girls Higher Secondary School, Erode Taluk. Further, during questioning under Section 313 Cr.P.C., the petitioner admitted her signature found in the cheque, though made a claim that handwriting and signature are different. The petitioner failed to further clarify the same in the cross examination, not examined any defence witness or entered into the box and gave any explanation. The trial Court considering these factors and finding that the petitioner not disputed the signature, not discharged statutory presumption under Sections 118 and 139 of Negotiable Instruments Act, convicted the petitioner. The Lower Appellate Court independently considering the petitioner's contention, had come to a finding confirming the conviction and sentence.

7.This Court, on perusal of the materials and the typed set of papers and the grounds raised by the petitioner finds that the judgment of the trial Court as well as Lower Appellate Court are well reasoned one. Both Courts



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considered the evidence and the defence taken by the petitioner and thereafter finding that statutory presumption is against the petitioner and the petitioner not disputed the signature but raised defence without any materials, had convicted the petitioner.

8.In view of the same, this Court is not inclined to interfere with the finding of the Courts below. Hence, the Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

23.08.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.

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To

1.The II Additional District Sessions Judge,
Erode.

2.The Judicial Magistrate
(Fast Track Court No.II), Erode.

3.The Public Prosecutor,
High Court, Madras.

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and

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