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CrI.RC.No.63 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2025

CORAM:

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

CrI.RC.No.63 of 2023

Geetha Ramasamy

...

Petitioner

Versus

Krishnan

...

Respondent

PRAYER:

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, praying to set aside the judgment passed against the petitioner in CrI.A.No.20 of 2021 by the III Additional District and Sessions Judge, Coimbatore dated 29.11.2022 confirming the judgment made in CC.No.80 of 2019 by the Judicial Magistrate, Fast Track Court at Magisterial Level – I at Coimbatore dated 28.12.2020 and allow the criminal revision petition and acquit the petitioner herein.

For Petitioner : Mr.V.Jeyachandran

For Respondent : Mr.K.Balasubramaniam
for Mr.A.Shamsudden Raja

ORDER



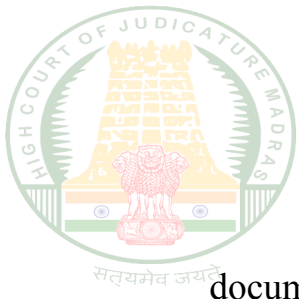
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This criminal revision case has been filed against the judgment passed in Crl.A.No.20 of 2021 by the III Additional District and Sessions Judge, Coimbatore dated 29.11.2022 confirming the conviction and sentence imposed by the trial court in CC.No.80 of 2019 by the Judicial Magistrate, Fast Track Court at Magisterial Level – I at Coimbatore dated 28.12.2020 for the offences punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offences punishable under Section 138 of NI Act alleging that the petitioner borrowed a sum of Rs.8,00,000/- and in order to repay the said amount, he issued a cheque. It was presented for collection and however, it was returned for the reason 'funds sufficient'. After causing statutory notice, the petitioner filed the complaint.

3. On the side of the respondent, he had 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 the oral and



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documentary evidences, the trial court convicted the petitioner for the offences punishable under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment and also ordered to pay compensation of Rs.8,00,000/-. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and the conviction and sentence imposed by the trial court was confirmed.

4. The learned counsel for the petitioner would submit that the petitioner requested loan from the respondent and borrowed a sum of Rs.8,00,000/-. However, the petitioner could not return the amount and as such, the respondent lodged police complaint in the presence of Police. Thereafter, the car owned by the petitioner was handed over to the respondent and a sign was made in the transfer of ownership form. Accordingly, the respondent sold out the said car to a third party for a sum of Rs.10,00,000/-. Out of Rs.10 lakhs, a sum of Rs.5,00,000/- was adjusted towards the loan borrowed from the financier and Rs.5,00,000/- was adjusted towards the loan amount borrowed by the petitioner from the respondent. Apart from the said amount, the petitioner had paid a sum of Rs.1,60,000/-. However, both the facts were not brought to notice of

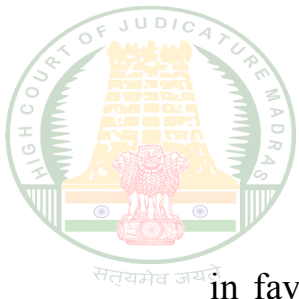


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the trial court by cross examination or by letting in evidence. He further submitted that the cheque was presented for collection on 28.11.2018 and the return memo was issued on 29.11.2018. However, statutory notice was issued only on 25.01.2019 and it was issued beyond the period of limitation. Therefore, there was no cause of action arising to lodge the complaint. However, without considering the above facts and circumstances, the trial court mechanically convicted the petitioner and the same was also confirmed by the appellate court.

5. Per contra, the learned counsel for the respondent would submit that initially the cheque was presented for collection on 28.11.2018 and the same was returned on 29.11.2018. It was informed to the respondent and on further request, the cheque was re-presented once again on 24.12.2018. Once again it was returned dishonoured for the reason 'insufficient funds' by the return memo dated 26.12.2018. Within the admitted period from the date of the return, the statutory notice was caused on 25.01.2019 and it was duly received. However, the petitioner failed to reply. Further, though the petitioner had taken specific stand that the car owned by her was already handed over and the same was sold out



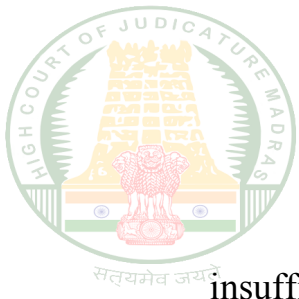
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in favour of a third party, she failed to substantiate the said contention either before the trial court or the appellate court. Therefore, both the courts below rightly convicted the petitioner and the said conviction does not require any interference by this Court .

6. Heard, the learned counsel appearing on either side and perused, all the materials produced before this Court.

7. The petitioner borrowed a sum of Rs.8,00,000/- from the respondent. However, the petitioner could not repay the same. On the complaint lodged by the respondent before the Inspector of Police, B2 RS Puram Police Station, the petitioner appeared before the police and assured that the loan amount will be repaid. She also produced her car before the police station. Thereafter, she issued cheque for a sum of Rs.8,00,000/-. It was presented for collection on 28.11.2018. However, it was returned dishonoured for the reason 'funds insufficient' on 29.11.2018. It was informed to the respondent and on request, the cheque was once again re-presented for collection on 24.12.2018. However, it was again returned dishonoured for the very same reason 'funds

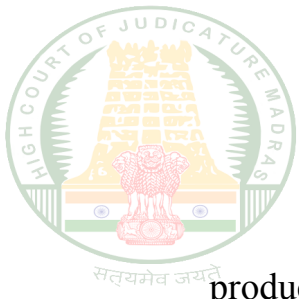


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insufficient' on 26.12.2018. Therefore, the contention of the petitioner that notice was not issued in time in consonance with the provision under Section 138(b) of NI Act cannot be considered. On the request, the cheque was once again re-presented for collection on 24.12.2018 and the same was returned dishonoured by the return memo dated 26.12.2018. Thereafter, within a period of one month i.e. on 25.01.2019, notice was issued as contemplated under Section 138(b) of NI Act to the petitioner. It was duly received, but the petitioner failed to reply. Therefore, there was cause of action to lodge complaint for the offences under Section 138 of NI Act.

8. Insofar as the second contention raised by the petitioner that the car owned by her was handed over to the respondent and the same was sold out in favour of a third party, in order to substantiate the same, the petitioner did not even whisper anything by way of reply notice or by way of letting in evidence before the trial court or before the appellate court. The petitioner argued in air to substantiate the same by oral evidence. If at all the car owned by the petitioner was sold out in favour of a third party by the respondent, the petitioner could have easily



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produced the registration certificate of his car by change of ownership.

However, the petitioner failed to do so. That apart, under Section 313 questioning, the petitioner categorically admitted her liability and assured that she will pay the cheque amount. Further, she also admitted that it is a true case. After having been admitted during the questioning, the learned counsel for the petitioner cannot take a different stand. The petitioner did not even cross examine PW1 and also did not send any reply notice to the statutory notice to rebut the presumption. Therefore, both the trial court as well as the appellate court rightly convicted the petitioner for the offences punishable under Section 138 of NI Act and this Court finds no infirmity or illegality in the impugned judgments. As such, this criminal revision case is liable to be dismissed.

9. Accordingly, this criminal revision case is dismissed.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non speaking order
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To
1.The III Additional District and Sessions Judge,
Coimbatore
2.The Judicial Magistrate, Fast Track Court
at Magisterial Level – I at Coimbatore



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G.K.ILANTHIRAIYAN. J,

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