IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.08.2025**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.RC.No.306 of 2024

Tmt. M. Devi ... Petitioner

Versus

E.M. Sarathi ... Respondent

PRAYER: Criminal Revision filed under Section 397(1) & 401 of Criminal Procedure Code, 1973, to call for the entire records in connection with C.A.No.128 of 2018 on the file of the learned IV Additional District & Sessions Judge, Thiruvallur at Ponneri and set aside the conviction and sentence imposed by the learned IV Additional District & Sessions Judge, Thiruvallur at Ponneri in C.A.No.128 of 2018 dated 24.01.2024 confirming the conviction and compensation passed by the learned Judicial Magistrate, Thiruvotriyur by Judgement dated 20.03.2018 in S.T.C.No.299 of 2016.

For Petitioner : Mr. V. Parthiban

For Respondent : Mr. A. Rajapandian

ORDER

This revision has been preferred against the Judgement dated 24.01.2024 passed in C.A.No.128 of 2018 by the learned IV-Additional District and Sessions Judge, Thiruvallur at Ponneri, thereby confirming the conviction and sentence imposed by the learned Judicial Magistrate, Thiruvotriyur in S.T.C.No.299 of 2016 dated 20.03.2018, for the offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The petitioner is the accused for the offence under Section 138 of the N.I. Act, on the complaint lodged by the respondent/complainant, alleging that the petitioner was running a second hand two-wheeler sales shop. Both the petitioner and the complainant are well acquainted with each other. Therefore, the petitioner borrowed different amounts on various dates in the year 2014 upto December 2014, totalling to Rs.32,40,700/-. In order to discharge the liability, the petitioner issued two cheques. The two cheques were presented for collection, both cheques were returned unpaid with the endorsement 'Funds Insufficient'. After causing statutory notice, and failure of payment, the respondent filed a complaint, and the same was taken cognizance in

STC.No.299 of 2016 by the Trial Court. In order to prove the complaint, the respondent examined himself as P.W.1 and marked Exs.P1 to P5. No oral or documentary evidence was adduced on the side the petitioner.

3. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty of the offence under Section 138 of the N.I. Act, and convicted and sentenced her to undergo six months rigorous imprisonment and directed her to pay compensation of Rs.32,40,700/- to the complainant, in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.128 of 2018, which was also dismissed on 24.01.2024, by confirming the conviction and sentence imposed by the Trial Court. Hence, the present revision before this Court.

4. Learned counsel for the petitioner submitted that the petitioner categorically rebutted the presumption arising under Section 139 of the N.I. Act by sending a reply notice and cross-examining P.W.1. The specific case of the respondent was that till December 2014, the petitioner borrowed a sum of Rs.32,40,700/- on various dates, however,

the respondent failed to mention the specific dates on which, such a huge sum was allegedly borrowed by the petitioner, and no proof of document was obtained from him at the time of providing such a huge loan amount. He further submitted that the respondent admitted in his cross-examination that he did not produce any income tax evidence to show that the loan amount was allegedly borrowed by the petitioner. However, the specific defence of the petitioner was that she had only borrowed a sum of Rs.5 Lakhs in December 2014 at 12% interest. The petitioner paid the interest till 2015, for the said sum of Rs.5 Lakhs, and thereafter she committed default. Therefore, for the borrowal of the said loan, she handed over two cheques along with original title deed of her house as security. the respondent misused the two cheques by filling up him for a sum of Rs.16,10,300/- and another cheque for a sum of Rs.16,30,400/- respectively, and presented for collection. Though, it was stated by the respondent that he had filed a return memo/Ex.P2, 20.01.2016 which does not bear any signature or seal. The respondent failed to examine the Bank Manager to prove that the cheques were presented for collection and dishonoured for 'Funds Insufficient'.

5. Further, he submitted that on receipt of statutory notice, the petitioner issued reply notice and categorically denied borrowing of Rs.32,40,700/-, but she agreed that she had borrowed a sum of Rs.5 Lakhs during the month of December 2014 at 12% interest per annum, and paid interest till December 2015, thereby she admitted her liability only to the extent of Rs.5,00,000/-. When the respondent insisted on repaying the entire loan amount, the petitioner furnished the original title deed of the petitioner's house as security, along with two blank cheques, and sought one month's time to repay the loan amount. However, the respondent insisted that the petitioner register the sale deed in favour of the respondent, pertaining to the title document that had already been handed over to him. When the petitioner refused to do so, the respondent filled up the two cheques for a sum of Rs.16,10,300/- and Rs.16,30,400/- respectively, and presented them for collection. Therefore, the petitioner had categorically rebutted the presumption and established the probability of the defence. Therefore, the respondent/complainant had not established the existence of a legally enforceable debt of Rs.32,40,700/-. Even then, both the Courts below convicted the petitioner for the offence under Section 138 of the N.I. Act.

6. In view of the above infirmities, the concurrent findings of the Courts below suffer from perversity and cannot be sustained. Therefore, this Court is inclined to set aside the order of conviction and sentence imposed in STC No.299 of 2016, dated 20.03.2018, on the file of the Judicial Magistrate, Thiruvotriyur, as well as the Judgement dated 20.01.2024 passed in C.A.No.128 of 2018 on the file of the IV - Additional District and Sessions Judge, Thiruvallur.

7. This Court also observed that even the petitioner admitted her liability to the tune of Rs.5 Lakhs, in her reply notice. At the time of granting suspense of sentence by this Court on 22.02.2024, it was recorded that the petitioner had already deposited the said sum of Rs.5 Lakhs to the credit of STC.No.299 of 2016 before the Trial Court. To that effect, the proof of payment was also produced before this Court.

8. The respondent/complainant is permitted to withdraw the above said amount along with accrued interest, if any, by filing an appropriate application before the Trial Court. It is made clear that the

Trial Court shall permit the respondent to withdraw the amount, without ordering any notice to the petitioner.

9. Accordingly, the conviction and sentence imposed by the learned Judicial Magistrate, Thiruvotriyur, in STC No.299 of 2016, dated 20.03.2018, and confirmed in C.A.No.128 of 2018 dated 24.01.2024 by the learned the IV - Additional District and Sessions Judge, Thiruvallur, are hereby set aside.

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

06.08.2025

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Case Citation : Yes/No

klt

G.K.ILANTHIRAIYAN, J.

klt

To

1. The learned IV Additional District & Sessions Judge,
   Thiruvallur at Ponneri.

2.The learned Judicial Magistrate, Thiruvotriyur.

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