



Crl.R.C.No.743 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2025

PRONOUNCED ON : 20.08.2025

CORAM:

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

Crl.R.C.No.743 of 2023
and Crl.M.P.No.5770 of 2023

Kalpana

... Appellant

Versus

Pasupathy

... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w. 401 of Cr.P.C., praying to call for the records in C.A.No.09 of 2022 dated 17.03.2023 on the file of the learned Principal District and Sessions Judge, Dharmapuri, and by confirming the order passed in C.C.No.53 of 2019 dated 27.12.2021 by the Fast Track Court (M.L), Dharmapuri and acquit the revision petitioner.

For Petitioner : Ms.D.Shobana
For Mr.K.Gandhikumar
For Respondent : Mr.S.Subramanian

ORDER

This Criminal Revision has been filed as against the judgment dated 17.03.2023 passed by the learned Principal District and



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Sessions Judge, Dharmapuri, in C.A.No.09 of 2022, confirming the judgment dated 27.12.2021 passed by the learned Judicial Magistrate, Fast Track Court (M.L), Dharmapuri, in C.C.No.53 of 2019, thereby convicting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as “the NI Act”)

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the NI Act, alleging that in the month of January 2019, the petitioner borrowed a sum of Rs.4,50,000/- as hand loan for business development of her husband. She also promised to repay the borrowed amount within a period of two months. In order to repay the borrowed amount, she issued two cheques for a sum of Rs.3,00,000/- and Rs.1,50,000/- respectively. Both the cheques were presented for collection and the same were returned dishonoured for the reason “funds insufficient”. After causing statutory notice, the respondent filed complaint and the same was taken cognizance by trial Court in C.C.No.53 of 2019.

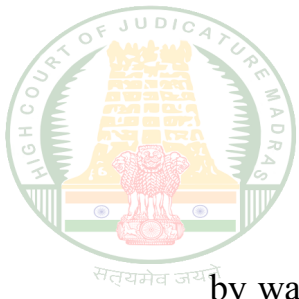


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3. Before the trial Court, the respondent had examined P.W.1 & P.W.2 and marked documents in Ex.P.1 to Ex.P.10. The Court document was marked as Ex.X.1. On the side of the petitioner, she examined herself as D.W.1 and marked documents as Ex.B.1 & Ex.B.2. On perusal of the oral and documentary evidences, the trial Court found the petitioner guilty for the offence punishable under Section 138 of the NI Act and sentenced her to undergo simple imprisonment for five months and also awarded compensation to the cheque amount of Rs.4,50,000/- to the respondent, in default, to undergo simple imprisonment for further period of one month. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by the Appellate Court confirming the order passed by the Trial Court. Hence the present revision.

4. The learned counsel appearing for the petitioner submitted that on receipt of the statutory notice, the petitioner issued reply notice which was marked as Ex.P.7. She categorically rebutted the presumption



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by way of reply notice. She had taken defence that she was working as a Teacher in the Government Higher Secondary School and her husband was the one to administer the entire family. He was doing business and was running mobile retail shop. In order to develop his business, the petitioner had obtained loan from the HDFC bank and the entire account of the petitioner was handled by her husband. Therefore, the petitioner handed over the signed blank cheque to her husband for emergency use. Thereafter, she came to know that her husband had borrowed money from several persons including the respondent herein by using her signed blank cheques. Therefore, there was quarrel between them and the petitioner was driven out of the matrimonial home in the month of December, 2018 itself. Thereafter, she filed petition for divorce in H.M.O.P. No.13 of 2019 before the Family Court, Dharmapuri and it was decreed on 06.07.2019, on the ground of cruelty. Therefore, the petitioner did not borrow any amount from the respondent.

4.1. She further submitted that on enquiry, the petitioner found that the petitioner's husband and the respondent are friends. During their



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business transactions, the husband of the petitioner borrowed money from the respondent for which he handed over the alleged cheques as security. Both the cheques were misused by the respondent and the proceedings under Section 138 of the NI Act was initiated against the petitioner. She further submits that the respondent did not even whisper about the date of alleged borrowal of Rs.4,50,000/- neither in the complaint nor in the statutory notice. The cheques were filled up by the respondent and was presented for collection. It shows that the cheques were issued for security purpose and both were not issued for any legally enforceable debt, since the petitioner did not borrow any amount.

4.2. She further submitted that the respondent also failed to prove his source of income and financial status to prove that he was capable to lend such a huge amount. Further no prudent person will lend such a huge sum, without any security documents. Even according to the respondent the alleged borrowal was in the month of January 2019. At the time of borrowal, no documents were received for security purpose. Therefore, the petitioner categorically rebutted the presumption.



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4.3. She also submitted that in fact her husband filed insolvency petition in I.P.No.54 of 2019 on the file of the Subordinate Court, Madurai, in which, the respondent was shown as one of the creditors. Therefore, the petitioner never borrowed any amount and the cheques were not issued for any legally enforceable debt. Even assuming that the petitioner's husband borrowed amount and handed over the alleged cheques as security, the petitioner is not liable to be punished for the offence under Section 138 of the NI Act. Even then, the trial Court and the appellate Court convicted the petitioner.

5. Per contra the learned counsel appearing for the respondent submitted that the petitioner and her husband colluded together and filed the petition for divorce. Though it was decreed, it was an ex-parte decree. It shows that the petitioner and her husband colluded together in order to cheat several persons from whom they borrowed huge amount of money. The petitioner was examined as D.W.1 and she categorically admitted that her husband and the respondent are close friends and were doing



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business together. During their business transactions, the petitioner and her husband used to borrow loans. In fact, both the petitioner and her husband borrowed loan from several persons. After borrowing loan, they obtained decree of divorce only to cheat the persons who lent loan. They are habitual offenders as such, the trial Court as well as the appellate Court rightly convicted the petitioner and the concurrent findings need not be interfered by this Court.

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

7. On perusal of the records, it is revealed that the respondent did not even whisper about the date of alleged borrowal by the petitioner. The complaint states that in the month of January 2019, the petitioner borrowed a sum of Rs.4,50,000/-. Admittedly, the petitioner is working as Teacher in the Government Higher Secondary School and she is receiving salary. Further, the petitioner's husband was doing business and used to borrow loan from private financiers. In fact, the petitioner, being

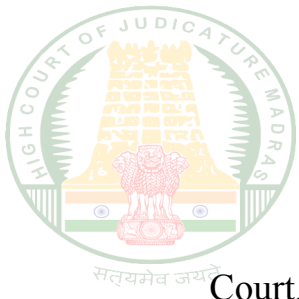


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a government servant, had borrowed loan from the HDFC bank to the tune of Rs.20,00,000/- due to the instigation of her husband to develop his business. During the course of business transactions, the petitioner's husband obtained blank signed cheques from the petitioner for the purpose of repaying the loan amount, since the petitioner's husband was the one to look after the accounts of the petitioner.

8. Further, without the knowledge of the petitioner, her husband handed over the cheques of the petitioner as security and borrowed loan from the private persons. Likewise, her husband borrowed loan from the respondent by handing over two blank cheques signed by the petitioner as security. Both the cheques were dated 02.03.2019. But the petitioner filed petition for divorce in H.M.O.P. No.13 of 2019 before the Family Court, Dharmapuri, on the ground of cruelty as early as on 01.02.2019, as against her husband. Further reasonable time prior to the date of the divorce petition, they got separated to comply with the provision under Section 13(1)(ia)(ib) of the Hindu Marriage Act, to file divorce petition. Though her husband failed to appear before the Family

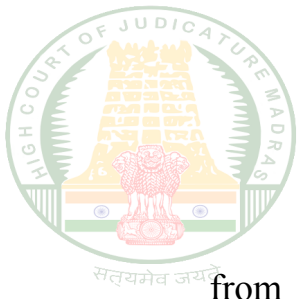


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Court, after receipt of the notice, the Family Court granted ex-parte decree. Unfortunately, the appellate Court, while discussing about the ground for divorce, concluded that the petitioner failed to state that one of the reasons for divorce was that, her husband cheated her by borrowing loan from various persons by using her signed cheques. Even assuming that it was a collusive decree, the petitioner categorically rebutted the presumption that the alleged loan was borrowed only by her husband for which, the petitioner's cheques were handed over as security.

9. On perusal of the cheques which were marked as Ex.P.1 & Ex.P.2, it is seen that the signature and other materials are different in both the cheques. In fact, the signature found in the both the cheques were differed from each other. It could be seen even in the naked eye without using any scientific methods. It clearly shows that the cheques were filled by the respondent. Therefore, both the cheques were not issued by the petitioner for any legally enforceable debt. Further, the petitioner was examined as D.W.1 and she categorically deposed that she did not even know the respondent and she never borrowed any amount



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from the respondent. She did not issue any cheques and the alleged cheques were not issued for any legally enforceable debt. Only after presentation for collection, the petitioner came to understand that the cheques were misused by her husband and were handed over to the respondent. She also came to understand that her husband borrowed huge sum of money from several private persons and defaulted in repaying the same. Therefore, the petitioner's husband filed insolvency petition to declare him as insolvent in I.P.No.54 of 2019 on the file of the Subordinate Court, Madurai, which was marked as Ex.D.1.

10. On perusal of the Ex.D.1, it is revealed that, the respondent was shown as one of the creditors/4th respondent. The particular of amount viz., the nature of debts due to the respondent is Rs.13,00,000/-. Therefore, it clearly shows that the petitioner's husband borrowed the loan from the respondent and the cheques issued by the petitioner were misused and the proceedings under Section 138 of the NI Act was initiated. Therefore, this Court finds perversity in the findings of the Trial Court as well as the Appellate Court while convicting the petitioner



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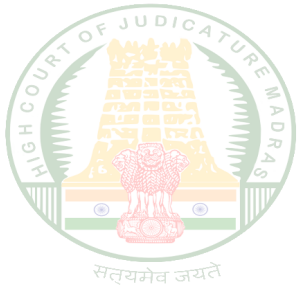
for the offence under Section 138 of the NI Act. Hence, it cannot be sustained and is liable to be set aside.

11. In view of the above discussions, the judgment dated 17.03.2023 passed by the learned Principal District and Sessions Judge, Dharmapuri, in C.A.No.09 of 2022, and the judgment dated 27.12.2021 passed by the learned Judicial Magistrate, Fast Track Court (M.L), Dharmapuri, in C.C.No.53 of 2019, are hereby set aside. The petitioner/accused is acquitted of all charges in C.C.No.53 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court (M.L), Dharmapuri. Fine amount, if any paid, shall be refunded to the petitioner forthwith. Bail bonds, if any executed, shall stand cancelled.

12. Accordingly, the Criminal Revision Case stands allowed. Consequently, connected miscellaneous petition is closed.

20.08.2025

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J.

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To

1. The Principal District and Sessions Judge,
Dharmapuri,

2. The Judicial Magistrate,
Fast Track Court (M.L),
Dharmapuri.

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and Crl.M.P.No.5770 of 2023

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