

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

Coram

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Criminal Revision Case No.988 of 2015
& M.P.No.1 to 3 of 2015

V.Vani

.. Petitioner

vs

R.Prasad

.. Respondent

Criminal Revision Case is filed under Section 397 r/w 401 of Code of Criminal Procedure, against the judgment dated 02.07.2015 made in Crl. Appeal No.147 of 2014 passed by the learned XV Additional Sessions Judge, Chennai, confirming the conviction and sentence dated 15.05.2014 made in C.C.No.2736 of 2010 passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Chennai by allowing this revision.

For Petitioner : Mr.V.Vargees Amal Raja

ORDER

The petitioner has come forward with this Criminal Revision case to set aside the judgment dated 02.07.2015 made in Crl. Appeal No.147 of 2014 passed by the learned XV Additional Sessions Judge, Chennai, confirming the conviction and sentence dated 15.05.2014 made in C.C.No.2736 of 2010 passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Chennai.

2. This revision case is taken up for disposal at the admission stage itself.

3. The only attack of the learned counsel for the petitioner is that the notice has not been served on the petitioner and that the Honourable Supreme Court in CDJ 2009 SC 1178 has held that a notice that has not been served on the the appellant cannot be treated as properly served and the relevant paragraph is extracted below :

"Section 138 deals with the dishonour of cheque for insufficiency, etc., of funds in the accounts of the person who draws the cheque and lays down that such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Proviso to section 138 specified the conditions which are required to be satisfied before a person can be convicted for an offence enumerated in the substantive part of the section. Clause (b) of the proviso to Section 138 cast on

the payee or the holder in due course of the cheque, as the case may be, a duty to a demand for payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. In the present case, the notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that complainant-respondent has not complied with the requirement of giving notice in terms of Clause (b) of proviso to Section 138 of the Act. Unfortunately, the High Court overlooked this important lacuna in the complainant's case. Therefore, the conviction of the appellant cannot be sustained."

The petitioner has not raised the above argument either in the Magistrate Court or in the Appellate Court. This fact has been admitted by the petitioner.

4. The Metropolitan Magistrate has convicted the accused and imposed one year Simple Imprisonment and to pay Rs.1,10,000/- to be paid as compensation to the complainant within three months under section 357(3) Cr.P.C. in default to undergo simple imprisonment for a period of three months. However, fine was not imposed.

5. Aggrieved by the said order, the petitioner herein has preferred an appeal which was dismissed and the conviction and the sentence passed by the Metropolitan Magistrate, Fast Track Court No.I in C.C.No2736 of 2010, dated 15.05.2014 was confirmed and the trial court was directed to secure the accused for due execution of the sentence imposed on the petitioner. I do not find any reason to interfere with the order passed by the lower appellate court as well as by the trial court.

7. Hence, this Criminal Revision case is dismissed and consequently, the miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

vrc

Sub Assistant Registrar

To

1. The XV Additional Sessions Judge,
Chennai.

2. The Metropolitan Magistrate Fast Tract No.I,
Egmore, Chennai.

CrI. R. C. No.988 of 2015