

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1105 of 2009

Prema Varadarajulu

... Petitioner

Versus

Abavanan

... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 28.01.2009 passed by the learned III Additional Sessions Judge, Chennai in C.A.No.197 of 2008 in reversing the conviction and sentence passed by the learned VII Metropolitan Magistrate, George Town, Chennai dated 23.07.2008 in C.C.No.9006 of 2006.

For Petitioner : Mr.P.Subba Reddy

For Respondent : No appearance

ORDER

The respondent is the sole accused in C.C.No.9006 of 2006 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months. The trial Court further directed the respondent/accused to pay a compensation of Rs.3,10,000/- towards the dishonoured cheque amount. As against the conviction and sentence imposed, the respondent/accused filed Crl. Appeal No.197 of 2008 and the first appellate Court by judgment dated 28.01.2009, while setting aside the conviction and sentence ordered by the trial Court confirmed the fine amount imposed. Aggrieved by the same, the complainant has filed the present Criminal Revision Case.

2. The case of the complainant in brief is as follows:

The respondent/accused was a tenant in the petitioner's premises and failed to pay the rent for a long time and in order to discharge

the legally enforceable debt, issued a post dated cheque for a sum of Rs.3,10,000/- . However, when it was presented, the same was returned with the endorsement "insufficient funds". Hence, the complainant issued a legal notice and neither a reply notice was issued nor the amount was repaid by the respondent/accused. Hence, the complaint.

3. The main ground of attack made by the petitioner/complainant in this revision, is that the first appellate Court failed to appreciate the oral and documentary evidence adduced on the side of the complainant and simply set aside the conviction and sentence ordered by the trial court by taking into consideration the fact that the respondent/accused has paid a sum of Rs.6,00,000/- towards rental arrears out of the total due of Rs.7,50,000/-. He would further submit that the first appellate court has not taken into consideration Ex.P2, wherein the respondent/accused himself has accepted his rental arrears. Accordingly, he would pray for setting aside the judgment passed by the first appellate court.

4. Though notice has been ordered to the respondent at the time of admission, till date there was no representation for him either in person or through the counsel and the matter is pending from the year 2009. Hence, as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], the Criminal Revision Case is taken up for disposal on merits.

5. A careful perusal of the judgment passed by the first appellate Court, it is seen that the learned Judge has taken into consideration the fact that the complainant himself has admitted the receipt of Rs.6,00,000/- towards rental arrears paid by the respondent/accused and he has also vacated the premises even without filing of RCOP. But the petitioner would now submit that the payment of Rs.6,00,000/- made by the respondent/accused is for a different period for which there was no explanation on the petitioner side.

6. In view of the above, I do not find any reason to interfere with the judgment passed by the first appellate Court, setting aside the conviction and sentence ordered by the trial court. Accordingly, this Criminal Revision case fails and the same is dismissed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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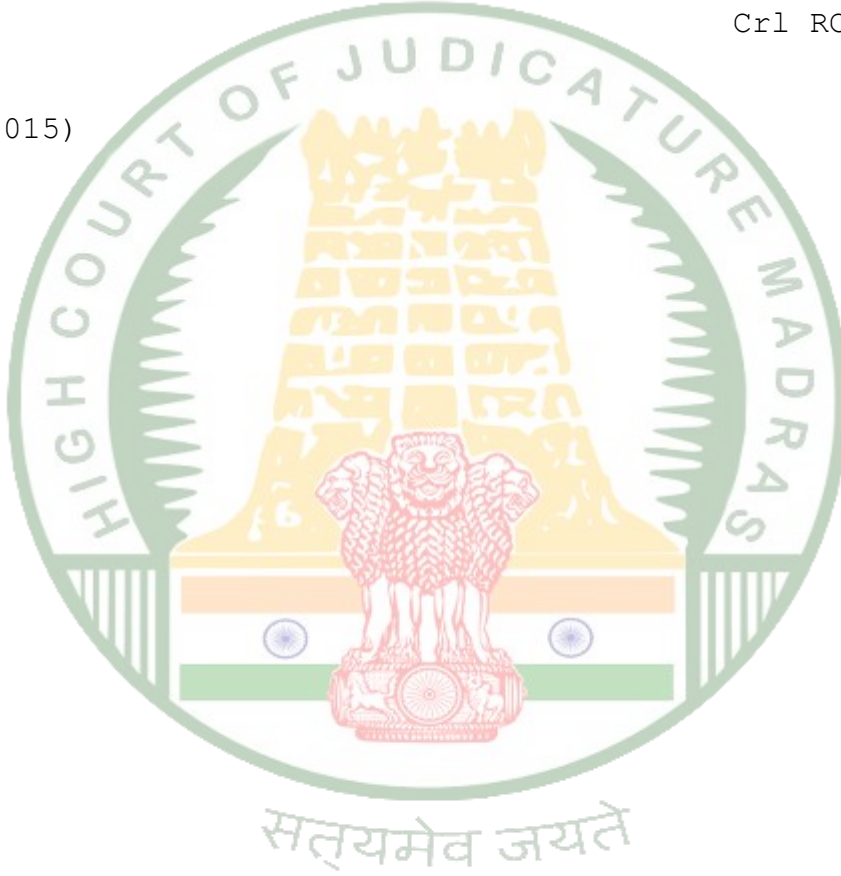
To

1. The III Additional Sessions Judge,
Chennai
2. The VII Metropolitan Magistrate,
George Town, Chennai

+1cc to Mr.P.Subbareddy, Advocate, S.R.No.51287

CrI RC No.1105 of 2009

ALA(CO)
CA(13/10/2015)



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