

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.6.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.1277 of 2010

S.Ragunathan

.. Petitioner/accused

Versus

V. Muthusamy

... Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, against the Judgment dated 27.9.2010 passed in Crl.A.No.135 of 2009 on the file of the Additional District and Sessions Judge (FTC-II) Salem, confirming the Judgment dated 30.10.2009 passed in S.T.C. No. 2238 of 2007 on the file of the learned Judicial Magistrate No.3, Salem.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.K.Srinivasan

ORDER

The petitioner is the accused and the respondent is the complainant.

2. The revision has been filed by the petitioner accused against the Judgment dated 27.9.2010 passed in Crl.A. No. 135 of 2009 on the file of the Additional District and Sessions Judge (FTC-II) Salem, confirming the Judgment dated 30.10.2009 passed in S.T.C. No.2238 of 2007 on the file of the learned Judicial Magistrate No.III, Salem.

3. The case of the complainant is that the accused purchased a lorry bearing No.TN.28 A 9678 belonging to his wife on 09.4.2007 on payment of Rs.50,000/- as advance out of the total consideration of Rs.4,50,000/-. The accused issued three cheques for Rs.1,00,000/- each and two cheques for Rs.50,000/- each drawn on ICICI Bank, Salem Shevapet Branch towards the balance sale consideration on 12.4.2007 in favour of the respondent/ complainant. When the said cheques were presented for collection, they were returned as insufficient funds. Therefore, a statutory notice was issued to the accused. Since the no payment was made even thereafter, the complainant has filed the present complaint for the offences punishable under Section 138 of the Negotiable Instrument Act and the same was taken cognizance in

S.T.C. No. 2238 of 2007 on the file of the learned Judicial Magistrate No.3, Salem. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced him to undergo 9 months simple imprisonment and to pay a fine of Rs. 1,000/- and in default to undergo Simple imprisonment for a period of one month. Aggrieved by the same, the accused has filed Crl.A. No.135 of 2009 before the learned Additional District and Sessions Judge (FTC-II) Salem and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the first appellate Court, the petitioner has filed the present Criminal Revision Cases.

4. The learned counsel appearing for the petitioner/accused did not argue on merits but confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel further submitted that the petitioner is willing to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for showing leniency against the petitioner.

5. I have heard the learned counsel for the respondent and perused the materials available on record.

6. By consent of both the counsel, the revision itself is taken up for final disposal.

7. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo nine months Simple Imprisonment and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for a period of one month.

8. On a careful analysis of the entire records, it is clear that there was a dealing between the accused and the complainant with regard to purchase of lorry. Only to discharge the balance sale consideration, the cheques in question were issued and that when the same were presented, they were returned with an endorsement "insufficient funds". There is no dispute with regard to the issuance of cheque for a sum of Rs.4,50,000/-. Therefore, the Courts below have rightly convicted the petitioner.

9. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he has argued only on the question of sentence and also the fact that the petitioner is willing to settle the amount in question, I am of the view that instead of sending the petitioner jail, in the interest of justice, he may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentence is modified to that of payment of compensation to the tune of Rs.8,00,000/- (Rupees eight lakhs only). The petitioner is directed to pay the amount of Rs.8,00,000/- to the complainant within a period of four months from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to pay the said amount within the above stipulated period, he shall undergo the period of sentence as imposed by the Courts below and this order will not enure to the benefit of the accused. The petitioner is directed to file an undertaking affidavit before this Court within a

period of ten days from the date of receipt of a copy of this order to that effect.

With the above direction and modification, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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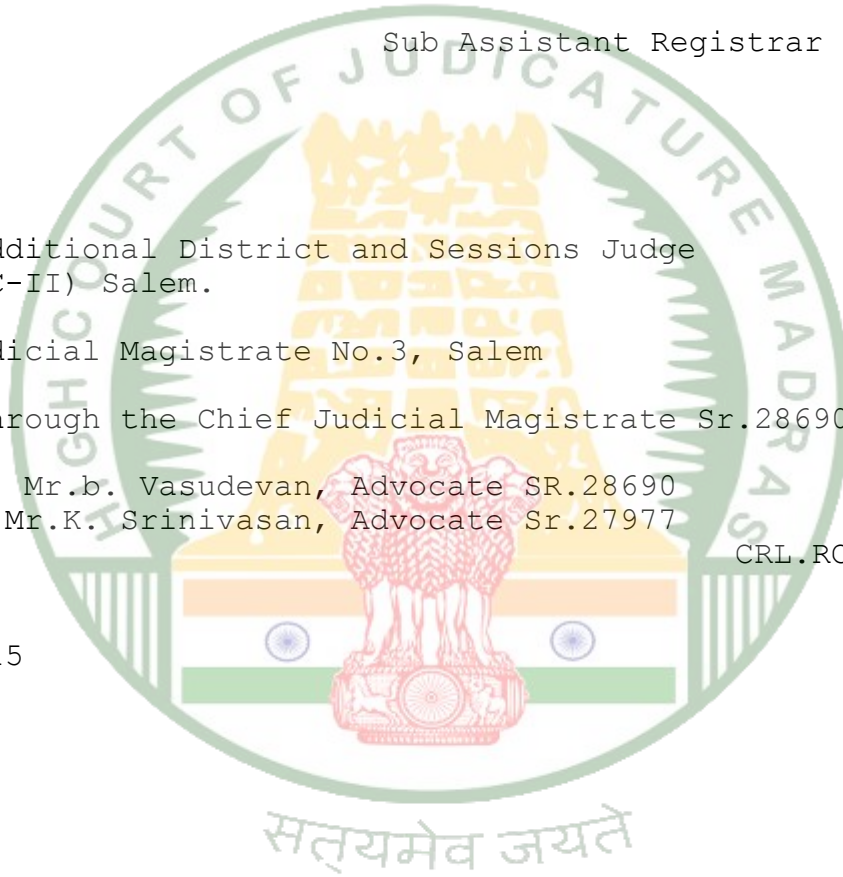
Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge (FTC-II) Salem.
 2. The Judicial Magistrate No.3, Salem
 3. -do- through the Chief Judicial Magistrate Sr.28690
- + 1 cc to Mr.b. Vasudevan, Advocate SR.28690
+ 1 cc to Mr.K. Srinivasan, Advocate Sr.27977

CRL.RC.No.1277 of 2010

KSJ(CO)
EU 02.07.15



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