

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.06.2015

Coram

The Honourable Mr. Justice B.RAJENDRAN

Crl. R.C.Nos.689 & 690 of 2008

Sivakumar

.. Petitioner/Appellant/Accused  
in both the Crl.Rcs.

vs.

M/s.Bhuvaneshwari Cotespin India Ltd.,  
rep. by Mr.S.L.Subramani

... Respondent/Complainant  
in both the Crl.Rcs.

Crl.R.C.No.689 of 2008 : This Criminal Revision petition is filed under Sections 397 r/w 401 of Criminal Procedure Code against the judgment of the learned Additional District & Sessions Judge, Fast Track Court No.V, Coimbatore at Tirupur in C.A.No.333 of 2007 to set aside the conviction and sentence imposed by the learned Judicial Magistrate No.I, Tirupur in S.T.C.No.3335 of 2006 by the judgment dated 12.07.2007 convicting the petitioner under Section 138 of the Negotiable Instrument Act and sentencing him to undergo one year S.I. and to pay a fine of Rs.3,000/- in default one month Simple Imprisonment and modify to pay fine of Rs.2,40,000/- inclusive of the fine of Rs.3,000/- already remitted by him before the trial Court in default to undergo simple imprisonment by its judgment dated 17.03.2008.

Crl.R.C.No.690 of 2008 : This Criminal Revision petition is filed under Sections 397 r/w 401 of Criminal Procedure Code against the judgment of the learned Additional District & Sessions Judge, Fast Track Court No.V, Coimbatore at Tirupur in C.A.No.334 of 2007 to set aside the conviction and sentence imposed by the learned Judicial Magistrate No.I, Tirupur in S.T.C.No.3336 of 2006 by the judgment dated 12.07.2007 convicting the petitioner under Section 138 of the Negotiable Instrument Act and sentencing him to undergo one year S.I. and to pay a fine of Rs.3,000/- in default one month Simple Imprisonment and modify to pay fine of Rs.3,50,000/- inclusive of the fine of Rs.3,000/- already remitted by him before the trial Court in default to undergo simple imprisonment by its judgment dated 17.03.2008.

For petitioner : Mr. C.D.Johnson  
For respondent : No Appearance

COMMON ORDER

Both the revisions are taken up together for final disposal.

2. The revision petitioner herein is the accused before the trial Court. The case of the petitioner is that he had business dealings with the respondent/complainant and in the course of business there was a due for a sum of Rs.5,88,659/-. For the said sum postdated cheques of Rs.2,00,000/-, 1,50,000/-, 1,50,000/- and Rs.88,539/- were issued by the petitioner in favour of the complainant drawn on Bank of Maharashtra, Tirupur Branch. When those cheques were presented for collection, the same were returned due to insufficiency of funds. Hence, the complainant preferred a complaint against the accused under Section 138 of the Negotiable Instruments Act. The complainant was examined as P.W.1 and Exs.1 to 7 were marked. Neither any witness was examined nor any documents were marked on the side of the accused/revision petitioner. When the accused was questioned under Section 313 (1) of CPC he denied the allegations made against him. Though a request was made by the accused to examine the witnesses he has not done so instead he filed petition after petition seeking adjournments. However, the trial court, taking into considerations the materials available on record had convicted the accused and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.3,000/- and in default to undergo simple imprisonment for one month. Aggrieved against the same, the accused preferred an appeal before the Appellate Authority. In appeal, the Appellate Court by setting aside the simple imprisonment had modified the sentence to pay a fine of Rs.2,40,000/- inclusive of the fine of Rs.3,000/- already remitted in default to undergo six months simple imprisonment and month time was granted to the accused to pay the fine amount. Against which, these revision petitions have been preferred.

Learned counsel appearing for the revision petitioner contended that the Court below has erroneously convicted the accused without taking into consideration the fact that the petitioner was not given an opportunity to cross examine the witnesses.

Though notice was ordered by this Court on several occasions even in the year 2012, no steps till date were taken to complete the service on the respondent. It is seen from the records that even before Lok Adalat these cases were posted on many occasions, both the parties were absent.

I have carefully considered the submissions made by the learned counsel for the petitioner and perused the materials placed on record.

The only argument advanced by the learned counsel for the petitioner is that the accused was not given an opportunity to cross examine the witnesses. However, from the reading of the judgment of the Appellate Court, it is clear that accused neither choose to cross examine P.W.1 nor he had taken any steps to recall P.W.1. On the otherhand, when questioned under Section 313(1) of CPC, he only denied the deposition and at that point of time he has also stated that he wanted to examine other witnesses but he has not chosen to examine any one on his side. Thereafter, he has filed the petition on 02.07.2007 seeking adjournment stating that his counsel is absent and when the matter is adjourned to 09.07.2007, on that day, he filed another petition under Section 309 of CPC for adjournment. The said petition was dismissed and the case was posted for judgment on 12.07.2007. Even at that time also, the petitioner/accused had not taken any steps to pursue the matter. The Appellate Court found that the attitude of the accused shows that he has no reasoning to reject the claim of the respondent and hence has modified the sentence to pay compensation to the complainant. In that view of the matter, the argument advanced by the learned counsel for the petitioner that the accused was not given an opportunity to cross examine has to be rejected. Since the petitioner has no ground to reject his claim and was dilly-dally to make the payments, I do not find any error or infirmity in the judgment and decree of the Court below.

In the result, both these Criminal Revision Petitions are liable to be dismissed. Accordingly these Criminal Revision Petitions are dismissed. No costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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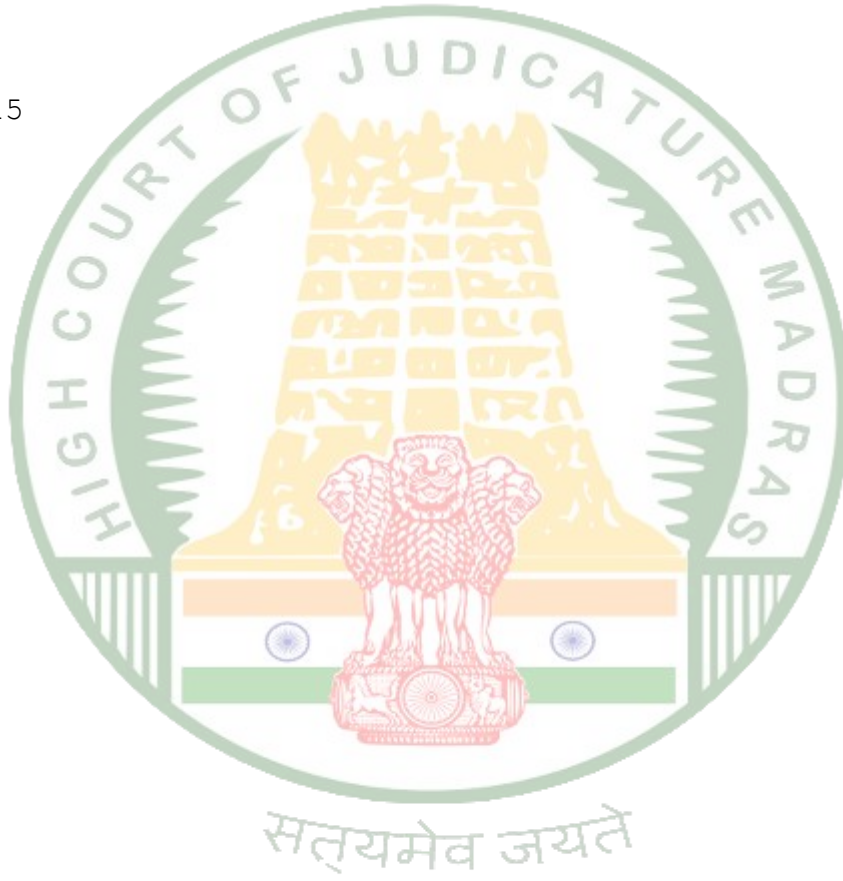
To

1. The Additional District & Sessions Judge,  
Fast Track Court No.V, Coimbatore at Tirupur.
2. The Judicial Magistrate No.I, Tirupur.

3.The Public Prosecutor, High Court, Madras.

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