



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

CRL.RC.(MD)No.446 of 2014

and

M.P.No.1 of 2014

R.Bose : Petitioner

Vs.

M.Jothivel : Respondent

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records from the Lower Courts and set aside the Judgment dated 08.07.2014 passed in S.T.C.No.1213 of 2007 by the Judicial Magistrate No.V, Trichy, which was confirmed in the Judgment dated 08.09.2014, passed in Crl.A.No.109 of 2014 by the Principal Sessions Court, Trichy.

For Petitioner : Mr.A.Thirumurthy

For Respondent : Mr.K.M.Karunakaran

O R D E R

The petitioner is the sole accused in S.T.C.No.1213 of 2007, on the file of the learned Judicial Magistrate No.V, Trichy. The respondent herein is the complainant in the said case. The respondent filed the said case by way of private complaint alleging that the petitioner had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, [for brevity, "the Act"]. The Trial Court, by Judgment dated 08.07.2014, convicted the petitioner and sentenced him to undergo simple imprisonment for three months with a fine of Rs.1,000/- in default to undergo simple imprisonment for three months and also to pay a sum of Rs.10,484/- as compensation. Challenging the same, the petitioner has filed Crl.A.No.109 of 2014. The learned Principal Sessions Judge, Trichy, by Judgment dated 08.09.2014 dismissed the appeal, thereby confirming the conviction and sentence imposed by the Trial Court. As against the same, the petitioner is now before this Court with this Criminal Revision Case.

2. I have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent and perused the records carefully.



3. Admittedly, in this case, the cheque in question was issued by the petitioner in the capacity of the Secretary of an Association, known as "Tamil Nadu Administrative Officers Association", which is a registered association, on behalf of the bank account maintained by the said association. The cheque was issued by the petitioner on behalf of the association in discharge of the legally enforceable debt. When the cheque was presented for collection, it was dishonoured. With these allegations, the private complaint was filed.

4. In this Criminal Revision Case, it is submitted by the learned counsel for the petitioner that in the absence of the prosecution of the association, viz., "Tamil Nadu Administrative Officers Association", the prosecution of the petitioner is not sustainable. For this proposition, the learned counsel for the petitioner relies on the Judgment of the Hon'ble Supreme Court in **Aneeta Hada Vs. Godfather Travels & Tours Pvt Ltd.**, reported in **2012 (2) MWN [Cr.] [DCC] 69 SC.**

5. The learned counsel appearing for the respondent is not in a position to explain as to how the complaint before the Lower Court in the absence of the association as an accused is sustainable. In the said Judgment, the Hon'ble Supreme Court has settled the law that the prosecution of a partner or a person in charge of the company, in the absence of the prosecution of the company itself is not sustainable.

6. In view of the above, the conviction and sentence imposed by the Trial Court and confirmed by the Lower Appellate Court is not sustainable and therefore, it is liable to be set aside. In the result, the Criminal Revision Case is allowed and the conviction and sentence imposed by the Trial Court, which was confirmed by the Lower Appellate Court is set aside and the petitioner is acquitted. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.V, Trichy.

2.The Chief Judicial Magistrate, Trichy

3.The Principal Sessions Court, Trichy.

4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1cc M/s.Victory Associates, Advocate Sr.No. 27504

+1cc Mr.K.M.Karunakaran, Advocate Sr.No. 27824

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ORDER MADE IN

CRL.RC. (MD) No.446 of 2014

DATED - 04.06.2015