

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1058 of 2016
and
Crl.M.P.No.8988 and 8989 of 2016

R.Pari
S/o.M.Rajalilngam

.. Petitioner

VS.

Sreeprakash

.. Respondent

Criminal Revision filed under section 397 and 401 Cr.P.C. to set aside the order dated 18.03.2006 passed in C.M.P.No.6371 of 2015 in STC No.578 of 2009 on the file of the Judicial Magistrate No.III, Salem by allowing the criminal revision.

For Petitioner : Mr.A.V.Arun

For Respondent : Mr.K.V.Sridharan

ORDER

The revision petition challenges the order of dismissal dated 18.03.2016 passed in in C.M.P.No.6371 of 2015 in STC No.578 of 2009 by learned Judicial Magistrate No.III, Salem.

2. Petitioner faces trial in STC No.578 of 2009 on the file of learned Judicial Magistrate No.III, Salem for offence under Section 138 of the Negotiable Instrument Act. The petitioner moved a petition in C.M.P.No.6371 of 2015 seeking discharge. Court below under order dated 18.03.2016 dismissed such petition. Hence, this revision.

3.Heard learned counsel for petitioner and learned counsel for respondent.

4.Learned counsel for petitioner submits that petitioner/accused seeks discharge in case alleging commission of offence under Section 138 of the Negotiable Instrument Act, wherein summary procedure is to be adopted.

5. Learned counsel for petitioner relied on the decision in **Bhushan Kumar and Another v. State of (NCT of Delhi) and another** (2012 [5] SCC 424) (cited supra), wherein, paragraph 20 reads as follows:

"It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

6.The Supreme Court in **Adalat Prasad v. Rooplal Jindal and Others (2004 [4] SCC (Cri) 1927)** held that no petition for discharge would lie in a summons case.

7.This Court is unable to follow the decision in **Bhushan Kumar and Another v. State of (NCT of Delhi) and another (2012 [5] SCC 424)** (cited supra). This Court follows the decisions of Larger Bench of Supreme Court in **Adalat Prasad v. Rooplal Jindal and Others (2004 [4] SCC (Cri) 1927)** as also that in **Subramaniam Sethuraman v. State of Maharashtra and Another (2005 SCC (Cri) 242)**.

8.Accordingly, this revision stands dismissed. Consequently, connected miscellaneous petitions are closed. Learned Judicial Magistrate is directed to dispose of S.T.C.No.578 of 2009 within a period of four months from the date of receipt of a copy of this order.

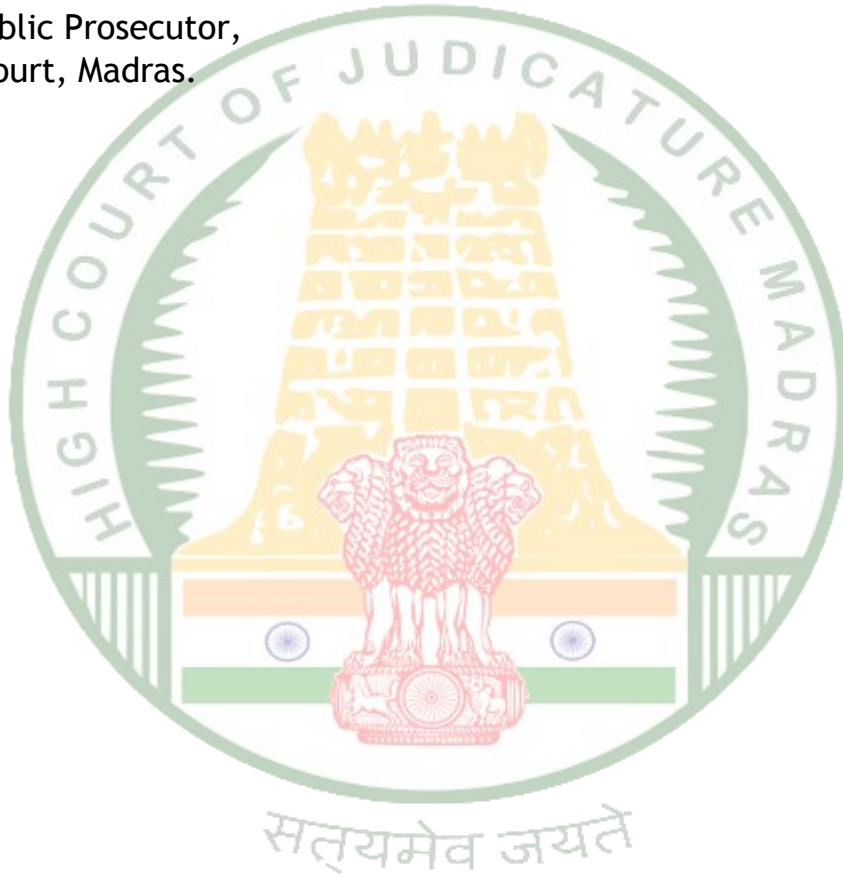
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Index: Yes/No
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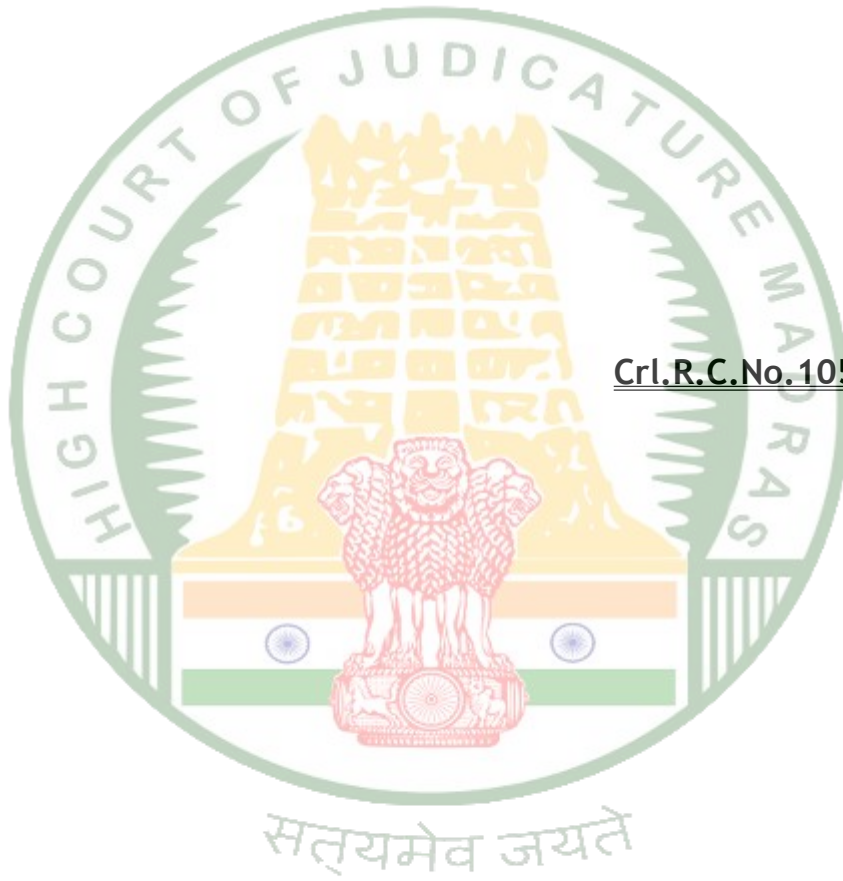
1.The Judicial Magistrate No.III,
Salem.

2.The Public Prosecutor,
High Court, Madras.



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C.T. SELVAM, J
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