

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM:

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

Cr1.R.C.No.1178 of 2016

&

Cr.M.P.No.10483 of 2016

R.Selvakumar ... Petitioner

vs.

C.Chandrasekaran ... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to set aside the judgment of learned I Additional Sessions Judge, Erode, passed in C.A.No.77 of 2015 on 28.03.2016 confirming the order of learned Judicial Magistrate, Fast Track Court No.I, Erode, passed in S.T.C.No.566 of 2013 on 22.04.2015.

For Petitioner : Mr.T.A.Srinivasen

For Respondent : Mr.V.Balamurugan

O R D E R

This revision is preferred against two concurrent judgments of Courts below convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo 6 months S.I. and directing him to pay a sum of Rs.5,000/- towards fine i/d 30 days S.I.

2. Respondent/complainant moved a prosecution informing that a cheque bearing No.035246 dated 24.09.2013 in a sum of Rs.5,00,000/- drawn on Allahabad Bank, Erode, stood issued to him by petitioner towards repayment of borrowing, which upon presentation was returned unpaid for the reason "funds insufficient". Respondent/ complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

3. Before the trial Court, the respondent examined himself and marked seven exhibits. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of materials before it, trial Court, under judgment dated 22.04.2015, convicted the petitioner and sentenced him to undergo 6 months S.I. and directed him to pay a sum of Rs.5,000/- towards fine i/d 30 days S.I. There against, petitioner preferred C.A.No.77 of 2015 on the file of learned I Additional Sessions Judge, Erode, which came to be dismissed under judgment dated 28.03.2016. Hence, this revision.

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

6. On appreciation of materials, Courts below found that as it was contended by accused himself that the cheque, given as security, had been misused by respondent/complainant. It was clear that the cheque in question had been issued by accused and signature on such cheque was that of the accused. They further found that accused had not caused reply to the statutory notice denying the allegations made against him. Though it was contended by accused that he had not borrowed a sum of Rs.5,00,000/- the accused had admitted execution of the disputed cheque but denied only the consideration. Courts below found that complainant has marked Ex.P1 [disputed cheque] to show that accused had borrowed a sum of Rs.5,00,000/-. Further, it was found that accused had not chosen to examine any witness or to mark any document to prove that the cheque was forged. Finding as above, Courts below have held that respondent/complainant has proved its case beyond all reasonable doubt and that petitioner/accused has failed to rebut the presumption u/s.139 of the Negotiable Instruments Act. A reading of the judgments of the Courts below inform a well balanced finding arrived at by them. This Court finds no reason to interfere with the finding of conviction.

7. In the result, the Criminal Revision stands dismissed confirming the conviction and sentence passed by Courts below. Learned Magistrate shall take steps to secure the petitioner towards his serving the remaining period of sentence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The I Additional Sessions Judge, Erode

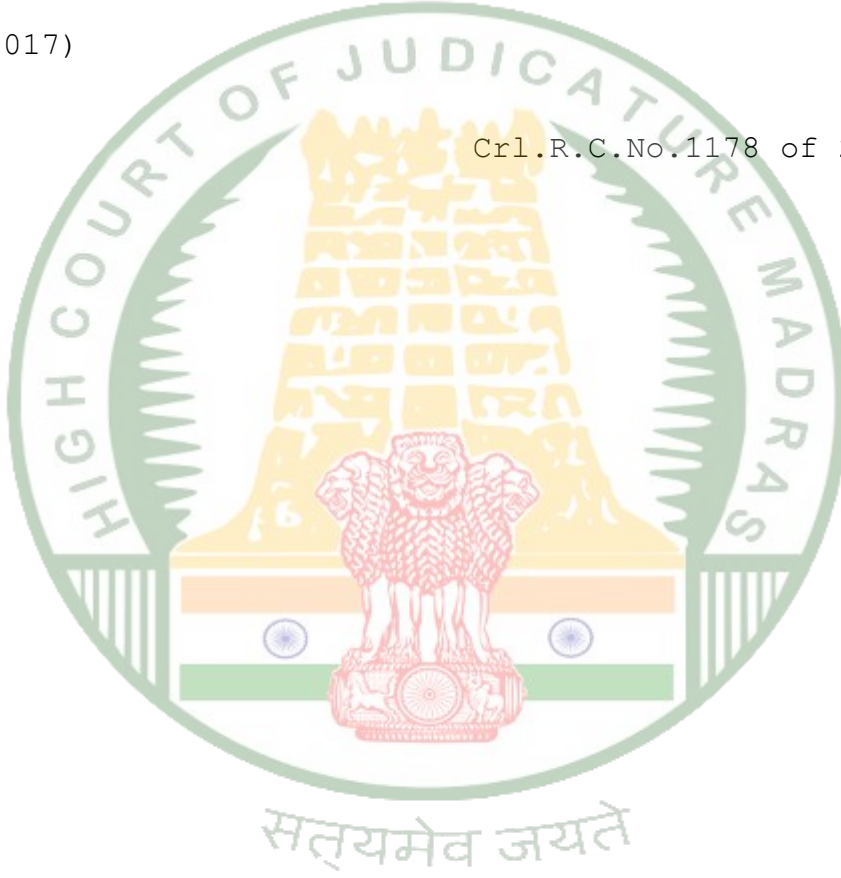
2.The Judicial Magistrate, Fast Track Court No.I,
Erode

+lcc to Mr.V. Balamurugane, Advocate, S.R.No.69590

+lcc to Mr.Sree and Associatess, Advocate, S.R.No.69809

md(05/01/2017)

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