

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM:

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

Crl.R.C.No.1166 of 2016

A.Mohammed Meera Rafia Ali
Proprietor
M/s.Mohamoda Tanning Company,
Bhavani Main Road,
B.P.Agraharam, Erode. Petitioner

Vs.

P.Selvaraj ... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned II Additional Judge, District and Sessions Court, Erode, passed in C.A.No.7 of 2016 on 19.09.2016 confirming the judgement of learned Judicial Magistrate, Fast Track Court II, Erode passed in S.T.C.No.307 of 2013 on 30.11.2015.

For Petitioner: Mr.G.K.Ilanthiraiyan
for M/s.Sai Bharath & Ilan
For Respondent: Mr.M.Guruprasad

O R D E R

This revision is preferred against two concurrent judgements of Courts below convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo 1 year S.I. and fine of Rs.5000/- i/d one month S.I.

2. Respondent/complainant moved a prosecution informing that cheques bearing Nos.895474 and 895475 dated 30.04.2005 for sums of Rs.1,00,000/- and Rs.2,50,000/- respectively drawn on Indian Overseas Bank, Thirunagar Branch stood issued to him by petitioner towards repayment of borrowings, which upon presentation were returned unpaid for the reason "insufficient funds". 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 eight exhibits. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of materials before it, trial Court, under judgement dated 30.11.2015, convicted the petitioner and sentenced him to undergo 1 year S.I. and fine of Rs.5000/- i/d one month S.I. There against, petitioner preferred C.A.No.7 of 2016 on the file of learned II Additional Sessions Judge, Erode, which came to be dismissed under judgement dated 19.09.2016. Hence, this revision.

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

6. Learned counsel for petitioner submits that petitioner has not borrowed any loan from the respondent and the cheques Ex.P.1 and Ex.P.2 have been handed over to the respondent as security for business transactions. Even though the petitioner disowns his signature in Ex.P.2, he admits his signature as far as Ex.P.1 is concerned. Learned counsel further submits that the blank cheques given by petitioner towards business transaction have been misused by complainant towards foisting a false case against petitioner.

7. Though learned counsel for petitioner initially had touched upon the merits of the defence of petitioner, learned counsel restricts himself to the question of sentence. Learned counsel submits that petitioner has deposited a sum of Rs.1,00,000/- before the trial Court. A perusal of documents reveals that inchoate instruments have been put to use in preferring the complaint.

8. Given the facts and circumstances of the case, this Court, even while confirming the finding of conviction entered upon by Courts below, considers it appropriate to modify the sentence to one of compensation of Rs.1,00,000/-. A sum of Rs.1,00,000/- presently stands deposited before the trial court. It will be open to the respondent to withdraw such sum on due application. Consequently, this Court makes it clear that it will not be necessary for the petitioner to undergo any imprisonment.

9. This Criminal Revision is disposed of with the above modification.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrc

To

1.The II Additional Judge,
District Sessions Judge,
Erode.

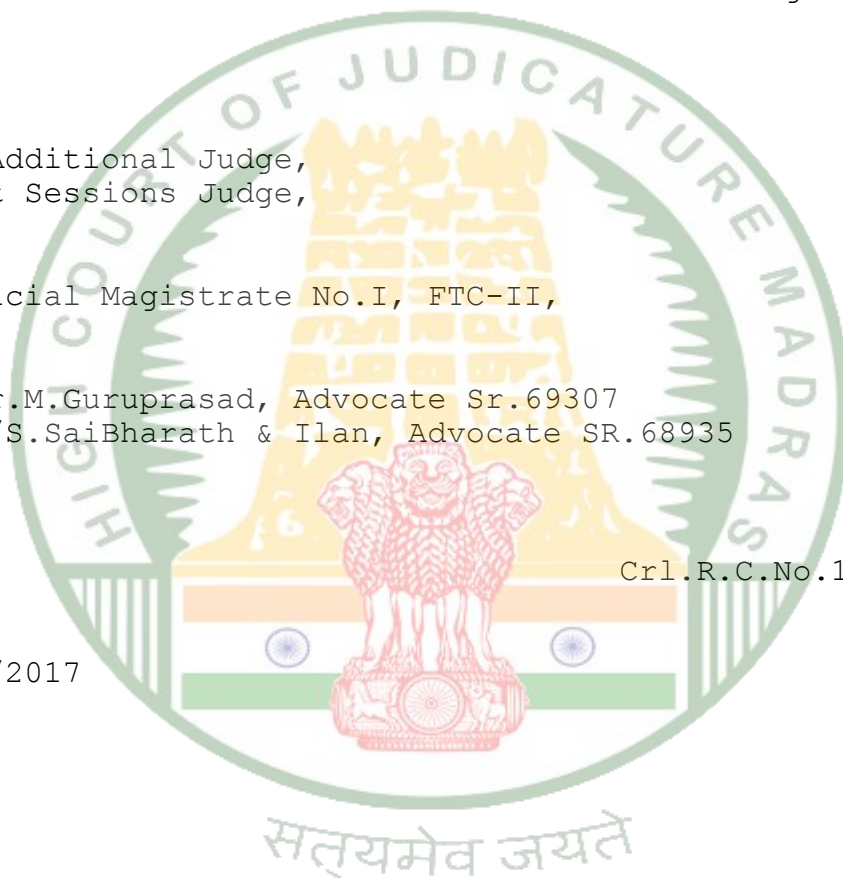
2.The Judicial Magistrate No.I, FTC-II,
Erode.

+1cc to Mr.M.Guruprasad, Advocate Sr.69307

+1cc to M/S.SaiBharath & Ilan, Advocate SR.68935

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