

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM:

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

CrI.R.C.No.1200 of 2016

and

CrI.M.P.Nos.10711 and 10940 of 2016

1. M/s.Sakthi Wing Garments

A Partnership firm represented by its
Partner M.Subramaniam
No.28, L.R.G. Layout Extension
A.B.T. Road, Karuvampalayam,
Tiruppur.

2. M.Subramaniam

Partner, M/s.Sakthi Win Garments
No.28, L.R.G. Layout Extension
A.B.T. Road, Karuvampalayam,
Tiruppur.

3. S.Vanitha

W/o.M.Subramaniam

.. Petitioners

vs.

R.Saminathan

S/o.Ramasamy

.. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned II Additional District and Sessions Judge, Tiruppur, passed in C.A.No.63 of 2015 on 14.06.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Tiruppur, passed in S.T.C.No.38 of 2012 dated 01.06.2015.

For Petitioners: Mr.J.Franklin

For Respondent : No appearance

O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioners for offence u/s.138 of the Negotiable Instruments Act and sentencing them to 1 year S.I. and fine of Rs.1,000/- each i/d 1 month S.I. Since the first petitioner is a company, the second petitioner was directed to pay the fine.

2. Respondent/de facto complainant preferred a complaint informing that petitioners borrowed a sum of Rs.7,00,000/- and undertook to repay the same with 12% interest. Upon the respondent insisting repayment, petitioners issued a cheque bearing No.582754 dated 04.02.2012 drawn on BOB Bank, Tiruppur. Respondent presented the cheque, which was returned unpaid for the reason 'Opening Balance Insufficient'. Respondent caused statutory notice, followed the procedure envisaged under section 138 of the Negotiable Instruments Act and preferred the complaint. The case was tried in S.T.C.No.38 of 2012 on the file of learned Judicial Magistrate, Fast Track Court, Tiruppur.

3. Before the trial Court, the respondent examined three witnesses and marked eighteen exhibits. Three witnesses were examined on behalf of defence and four exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 01.06.2015, convicted petitioners for offence u/s.138 of the Negotiable Instruments Act and sentenced them to 1 year S.I. and fine of Rs.1,000/- each i/d 1 month S.I. Since the first petitioner is a company, the second petitioner was directed to pay the fine. The appeal preferred by petitioners in C.A.No.63 of 2015 on the file of learned II Additional District and Sessions Judge, Tiruppur, came to be dismissed under judgment dated 14.06.2016. Hence, this revision.

4. Heard learned counsel for petitioners.

5. In convicting the petitioners, Courts below have found as follows:

- (i) Second petitioner/A2 has not denied the issuance of cheque and the signature thereon. Instead, he had contended that there was no money dealings with complainant, that he had not borrowed any sum from him and that the complainant was not financially capable of giving such a huge sum. It was the contention of second petitioner/A2 that upon the undertaking of the complainant that he would get a loan from Spectrum Finance Limited, Puducherry, he has issued blank cheque and signed in several documents and complainant has failed to do so. Though the second petitioner/A2 had knowledge of the fact that 'Spectrum' has cheated many persons, he has not chosen to prefer any complaint against the said company or the complainant. Instead, he had issued another blank cheque to the complainant and signed in several documents believing complainant's words that he would obtain loan from his friends. In the absence of any document in support of such contention, the same could not be accepted.

- (ii) RW-2, in chief-examination, deposed to having worked in the first petitioner company and having given a blank cheque to the complainant towards obtaining loan from Spectrum Finance Limited, Puducherry. No document has been produced in support thereof. In cross, he has deposed that he is the nephew of second petitioner. Hence, his evidence was found unreliable.
- (iii) Ex.R4, a notarised promissory note dated 19.05.2012, issued by one Palanichamy, has been marked towards proving that the complainant has given Rs.2,00,000/- to the second petitioner upon receipt of the cheque in question, another cheque, a promissory note and a signed blank paper. To substantiate such contention, neither the said Palanichamy nor the Notary has been examined. Hence, such document was not accepted.
- (iv) The Manager of Bank of Baroda has been examined as PW-2, who deposed that A2 and A3 are partners of A1 company and that the cheque of the company can be encashed if it bears the signature of either A2 or A3. He has further deposed that the cheque in question has been returned for the reason 'insufficient funds'. PW-3 has deposed that he had knowledge of the fact that the petitioners borrowed money from the complainant and he has also deposed that Ex.P3, Promissory Note, is a genuine document.
- (v) Once the instrument and signature has not been denied by petitioners/accused, then it is their duty to rebut the presumption u/s.139 of the Negotiable Instruments Act, which they have failed to do.
- (vi) Though the second petitioner, in chief, had deposed that he had preferred Ex.R2, complaint, against complainant before Tiruppur Police Station and obtained Ex.R3, receipt therefor, in cross, he had admitted that he had preferred such complaint only upon receipt of notice issued by complainant u/s.138 of the Negotiable Instruments Act.
- For the aforesaid reasons, the Courts below have rendered a finding of conviction. सत्यमेव जयते

6. Though this Court finds no error in the finding of conviction arrived at by Courts below, this Court is inclined to interfere with the finding of conviction as against third petitioner/A3. It is seen that no specific allegation has been levelled against third petitioner/A3 and the only allegation averred in the complaint is that the cheque had been issued by A2 with the knowledge of A3. Such allegation cannot suffice for convicting the third petitioner/A3.

In the result, the Criminal Revision Case is partly allowed. The finding of conviction arrived at by Courts below in respect of petitioners 1 and 2/A1 and A2 is confirmed and the

same is set aside insofar as third petitioner/A3 is concerned. Petitioner/A3 shall stand acquitted of all charges. Fine amount, if any, paid by her shall be refunded. Bail bonds, if any, executed by her shall stand cancelled. Connected miscellaneous petitions are closed.

gm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

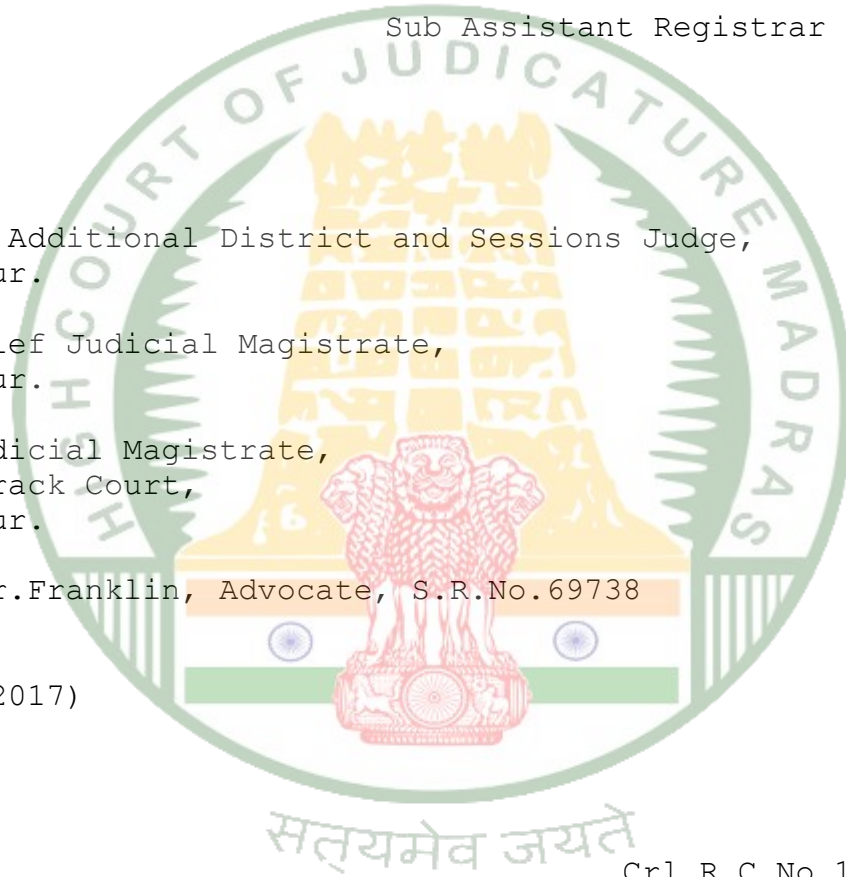
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To

1. The II Additional District and Sessions Judge,
Tiruppur.
2. The Chief Judicial Magistrate,
Tiruppur.
3. The Judicial Magistrate,
Fast Track Court,
Tiruppur.

+1cc to Mr.Franklin, Advocate, S.R.No.69738

VSN(CO)
RS(08/02/2017)



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