

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.R.C.No.607 of 2010

G.Shanmugam

.. Petitioner

Vs.

Sivaprakasam

.. Respondent

Criminal Revision filed under section 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge cum FTC, Vellore, passed in C.A.No.222 of 2007 on 31.05.2010, confirming the judgment of learned IV Judicial Magistrate, Vellore, passed in C.C.No.259 of 2005 on 17.10.2007.

For Petitioner :Dr.S.Padma

For Respondent :No Appearance

O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offences u/s.138 of Negotiable Instruments Act, sentencing him to undergo 1 year S.I. and to pay a sum of Rs.2,30,000/- towards the cheque amount and Rs.10,000/- towards costs.

2. Respondent preferred a complaint informing that the petitioner borrowed a sum of Rs.2,10,000/- on 14.01.2004 from him and towards repayment thereof, issued a cheque bearing No.954663 dated 09.11.2004 drawn on Federal Bank, Vellore Branch. When presented for payment on 10.11.2004, the same was returned unpaid with the endorsement 'Funds Insufficient'. Respondent/complainant had caused statutory notice on 20.11.2004. Petitioner did not cause reply to such notice. On having no payment as demanded in the statutory notice, the respondent preferred a complaint in keeping with Section 138 of the Negotiable Instruments Act. The case was tried in C.C.No.259 of 2005 on the file of learned Judicial Magistrate IV, Vellore.

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

4. On appreciation of materials before it, the trial Court rendered a finding of conviction, sentenced the petitioner to undergo 1 year S.I. and to pay a sum of Rs.2,30,000/- towards cheque amount and Rs.10,000/- towards costs. There against, the petitioner preferred an appeal in C.A.No.222 of 2007 on the file of learned Additional District and Sessions Judge cum FTC, Vellore, which came to be dismissed under judgment dated 31.05.2010, Hence, this revision.

5. Learned counsel for petitioner submits that through the cross examination of P.W.1/ Defacto complainant it had been established that he had not advanced huge sums to anybody else. It had been shown that he was not an income tax assessee and he had no means to advance sum of Rs.2,30,000/- as claimed by him. The defence case was that the petitioner had nothing to do with the complainant and it was the admission of P.W.1/complainant that there were no prior transactions between them. It was the case of defence that the cheque left with another had been misused towards foisting a false case against the petitioner. Learned counsel drew reference to the cheque giving rise to the action to submit that while the signature of the petitioner was in black ink the other writings on the cheque were in blue.

6. Though the respondent have been served there is no appearance for the respondent.

7. On consideration of submissions of learned counsel for petitioner and on perusal of evidence, this Court finds that the P.W.1/defacto complainant had in cross informed that the writing in the instrument should be that of the petitioner and also admitted that he did not know whose writing it was. The defacto complainant was not an income tax assessee, has not established his means and admittedly had earlier lent money only in sums of Rs.10,000/-, 20,000/- and 50,000/- at the maximum. He has also admitted to the accused not having been due to him before the date of cheque. In the circumstances, it is to be held that the petitioner had dislodged the initial presumption available in favour of the respondent u/s.139 Negotiable Instruments Act and when so, in the absence of any proof of debt, the petitioner would be entitled to benefit of doubt.

8. This Criminal Revision is allowed. The judgments of Courts below are set aside. Petitioner is acquitted of all charges. Moneys, if any, paid by petitioner shall be refunded to him. Bail bond if any executed shall stand cancelled.

kpr

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

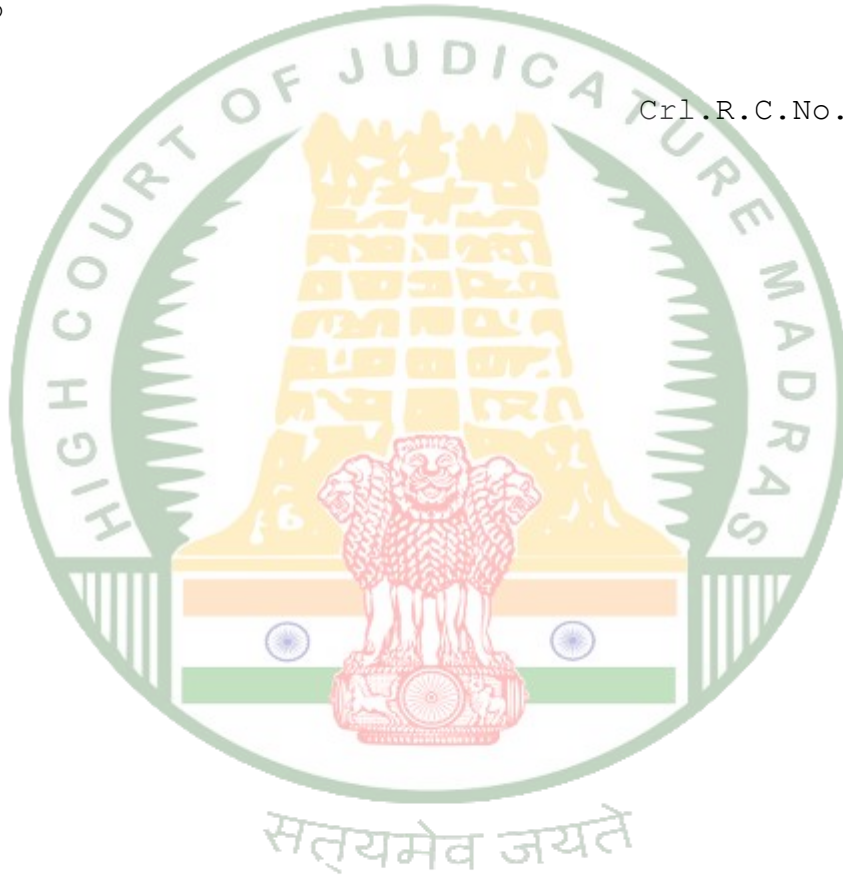
1. The Additional District and Sessions
Judge cum Fast Track Court, Vellore.

2. The Judicial Magistrate IV, Vellore.

+ 1 cc to Dr.S.Padma, Advocate Sr 359

KR/10/3/16

Cr1.R.C.No.607 of 2010



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