

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CRL.A.No.187 of 2017

M.Nagarajan

... Appellant

Vs.

T.Duraipandian

...Respondent

Prayer: Criminal Appeal filed under section 397 and 401 of Cr.P.C. against the judgment dated 03.12.2010 made in C.A.No.105 of 2010 on the file of the Additional District and Sessions Court/Fast Track Court No.IV, Bhavani by reversing the judgment dated 08.07.2010 made in S.T.C.No.6163 of 2008 on the file of the Judicial Magistrate, Bhavani and prayed to remand the case.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.Thiyagarajan

Judgment

The complainant in S.T.C.No.6163 of 2008 on the file of the Judicial Magistrate, Bhavani is the appellant herein. It is the complaint under section 138 of the Negotiable Instruments Act. The complainant alleged that the respondent has borrowed Rs.1,50,000/- from him and for the discharge of the said debt, the respondent issued the cheque in question which was dishonored by the Bank. After serving notice to the respondent, calling upon him to make payment, he has lodged the complaint. Before Trial Court, the complainant examined himself as PW1 and marked 4 documents. The respondent examined his Bank Manager as Rw1, on his behalf and marked his specimen signatures contained in the Bank records as Ex.R1.

2. The case of the respondent is that he has not borrowed any money from the complainant and the cheque was not issued for discharge of any liability. According to him, the office of the Finance Company, run by his sons was ransacked by one Abirami and Ilamaran, that they have taken away articles and cheques from the company, that subsequently they have obtained signatures of the respondent in three of the cheques under threat, and one of the cheques was misused and the present complaint has been filed by using the complainant.

3. The trial court disbelieved the version of the accused. It has accepted the case of the complainant and convicted the accused for the offence

under section 138 of Negotiable Instruments Act and sentenced him for 1 year simple imprisonment and awarded a compensation of Rs.1,50,000/-.

4. Aggrieved by the order of conviction and sentence, the respondent has preferred an appeal in C.A.No.105 of 2010, before the Additional Sessions Judge, Fast Track Court, Bhavani. The learned lower Appellate Judge allowed the appeal and set aside the judgment of conviction and sentence. Aggrieved by the judgment of the lower Appellate Court, the complainant has preferred the present appeal before this Court.

5. The learned counsel appearing for the appellant would submit that the lower appellate Court has simply reproduced the arguments advanced by the parties and it has not considered the materials and recorded a finding and that therefore, it is a fit case for remand to the appellate court.

6. The learned counsel appearing for the respondent advanced his arguments in support of the judgement passed by the lower appellate Court. According to him, the appellate court was justified in setting aside the judgment of the Trial Court.

7. I have carefully perused the judgment of the trial court and the lower Appellate Court. The Trial Court after considering the evidence both oral and

documentary, has come to the conclusion that the complainant has proved his case beyond reasonable doubt for the offence under section 138 of the Act. A careful reading of the judgment passed by the lower appellate court would reveal that, it has not dealt with the case properly, as an appellate court. It simply narrated the arguments advanced by the counsel for the respondent. It did not consider or discuss the evidences available on record. The learned Sessions Judge was required to analyse the evidences on record and after applying his mind, decide the appeal. As the lower appellate court failed to consider the materials on record, the submissions of the learned counsel for the appellant that the judgment of the lower appellate court, caused great prejudice to the appellant, has to be accepted. As the Appellate Court failed to appreciate the entire evidence and record its findings as regards guilt or otherwise of the accused, I am of the considered view that the impugned judgement of the lower appellate court cannot be sustained and it is liable to be set aside.

8. In the result, the Criminal Appeal is allowed and the Judgment passed by the learned Additional District and Sessions Judge, Fast Track Court No.4 Bavani, Erode District is set aside and the matter is remitted to the said Sessions Court for fresh disposal, in accordance with law. The parties are directed to appear before the said court on 11.09.2017.

18.08.2017

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order

Note: Issue order copy on 22.08.2017

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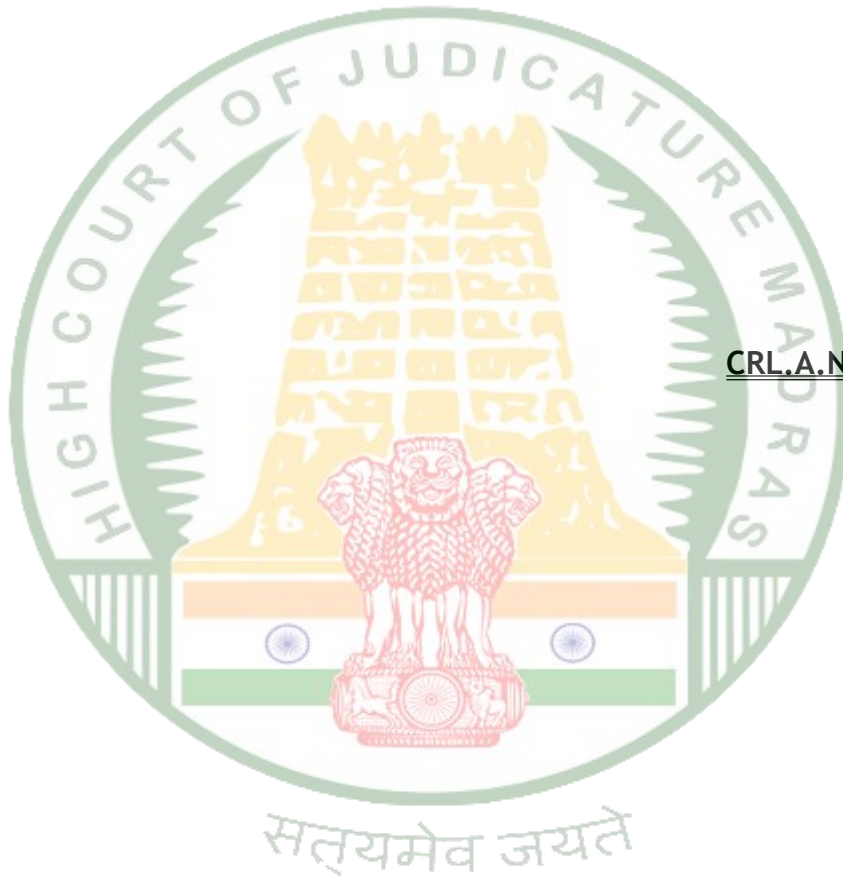
1. The Additional Sessions Judge,
Fast Track Court,
Bhavani.
2. The Judicial Magistrate,
Bhavani.



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.AUTHINATHAN, J

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