

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

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

Crl.R.C.Nos.315 and 316 of 2017
and
Crl.M.P.Nos.2994, 2995, 2996 and 2997 of 2017

B.Ashok Kumar
S/o.Balakrishnan .. Petitioner in both
revisions

vs.

M.Sudaraju
S/o.Marimuthu .. Respondent in
Crl.R.C.No.315/2017

M.Subramanian
S/o.Muthu .. Respondent in
Crl.R.C.No.316/2017

Criminal Revision Cases filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Hosur, passed in C.A.Nos.52 and 51 of 2013 on 30.04.2015 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Hosur, passed in S.T.C.Nos.7 and 8 of 2013 on 24.09.2013.

For Petitioner : Mr.R.Sankarasubbu,
No appearance

For Respondents : Mr.K.Subburam

C O M M O N O R D E R

This Court has reserved orders in these revisions on 03.03.2017. Thereafter, the matters were listed on three occasions. Today, the matters are listed under the caption 'for orders'. When the matters are taken up, it is represented that the petitioner/accused has not effected payment as agreed. Hence, this Court proceeds to pass orders on merits.

2. These revisions arise against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him as follows:

S.T.C.No.7 2013	of	6 months S.I. and compensation of Rs.1,50,000/- to be paid within a month.	of
S.T.C.No.8 2013	of	6 months S.I. and compensation of Rs.2,85,000/- to be paid within a month.	of

3. S.T.C.No.7 of 2013 on the file of learned Judicial Magistrate, Fast Track Court, Hosur, is an action moved by respondent/complainant informing that the petitioner/accused borrowed a sum of Rs.1,50,000/- from the complainant and a cheque bearing No.724312 dated 29.11.2012 drawn on Indian Bank, Susuvadi Branch, in a sum of Rs.1,50,000/- stood issued to him by petitioner towards repayment of borrowing, 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.

4. S.T.C.No.8 of 2013 on the file of learned Judicial Magistrate, Fast Track Court, Hosur, is an action moved by respondent/complainant informing that the petitioner/accused borrowed a sum of Rs.2,85,000/- from the complainant and a cheque bearing No.724305 dated 28.11.2012 drawn on Indian Bank, Susuvadi Branch, in a sum of Rs.2,85,000/- stood issued to him by petitioner towards repayment of borrowing, 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.

5. Before the trial Court, in both cases, respondent in respective cases, examined themselves and marked eight exhibits. Two witnesses were examined on behalf of the defence and no exhibits were marked.

6. On appreciation of materials before it, trial Court, under judgments dated 24.09.2013 convicted petitioner/accused and sentenced him as follows:

S.T.C.No.7 2013	of	6 months S.I. and compensation of Rs.1,50,000/- to be paid within a month.	of
S.T.C.No.8 2013	of	6 months S.I. and compensation of Rs.2,85,000/- to be paid within a month.	of

There against, petitioner preferred C.A.Nos.51 and 52 of 2013 on the file of learned Additional District and Sessions Judge, Hosur. Appellate Court, under judgments dated 30.04.2015, dismissed the appeals. There against, the present revisions have been filed.

7. There is no representation for petitioner. Heard learned counsel for respondents. Perused the materials on record.

8. The main contention of petitioner/accused before Courts below was that in the reply notice he has mentioned that he has borrowed money from respondents on several occasions and on each such occasion, he has given a blank cheque, a twenty rupees stamp paper and a promissory notice and he has also repaid the entire amount. The contention of petitioner/accused was that having received repayment from him, respondents/complainant instead of returning cheques and other documents obtained from him towards security have chosen to misuse the same and preferred false complaints. Courts below found that though it was the case of petitioner/accused that he has repaid the entire amount, he has not produced any document to prove such contention. In the absence of any such document establishing repayment by petitioner/accused, it cannot be construed that he has repaid the amount. Further, the petitioner/accused has not taken any steps to get back the documents which were given as security. For the aforesaid reasons and for other reasons, Courts below have found that respondents/complainants have proved their case and the petitioner/accused has failed to rebut the presumption u/s.139 of the Negotiable Instruments Act and accordingly, arrived at a finding of conviction. This Court finds that a well-reasoned approach stands adopted by Courts below in convicting petitioner/accused.

These Criminal Revision Cases shall stand dismissed. Connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gm

To

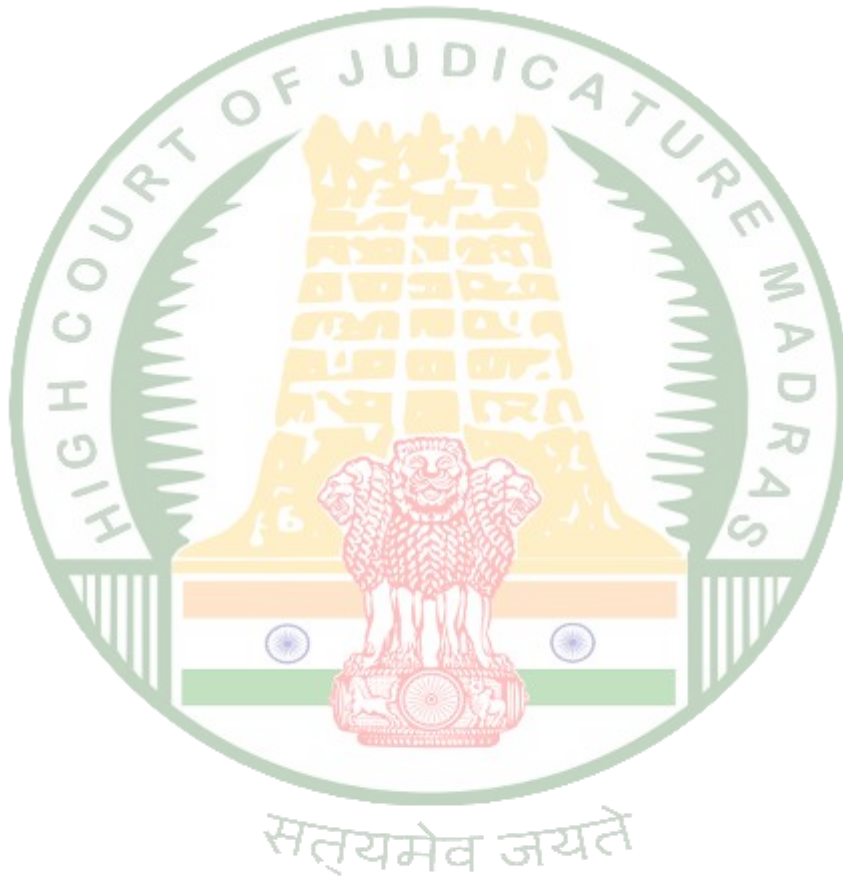
1.The Additional District and Sessions Judge,
Hosur.

2. The Judicial Magistrate,
Fast Track Court,
Hosur.

+2cc to Mr.K.Subburam, Advocate in sr.no.43417,43418

Cr1.R.C.Nos.315 and 316 of 2017

SSI (CO)
NR 20/07/2017



WEB COPY