

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.R.C.No.784 of 2011

1. G.Subramaniam

2. C.Balasubramanian

..

Petitioners

Vs

Tamilselvan,
S/o. K.Arumugam,
TEE-YES Textiles,
1/D, Ammal Eri Road,
Dadagapatti Gate,
Salem- 636006.
rep. By his Power of Attorney
Sekar, S/o. Late Alagappan,
Southern YarnAgencies,
147-G, Sri Hari Complex,
Appuchetty Street,
Shevapet, Salem – 636 002
Respondent

सत्यमेव जयते

Prayer:- Criminal Revision filed under Section 397 r/w. 401 Cr.P.C.,
against the order dated 23.05.2011 made in C.A.No.159 of 2010 on
the file of the Additional District and Sessions Judge, Salem,
dismissing the appeal against the conviction imposed in C.C.No.292
of 2001 dated 12.10.2010 on the file of the Judicial Magistrate No.IV,

For Petitioners : Mr. R.Marudhachalamurthy

For Respondent : Mr.S.Kalyanaraman

ORDER

The petitioners herein are the accused in a private complaint filed under Section 138 of the Negotiable Instrument Act, the trial Court convicted the petitioners and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for two months. Challenging the above said conviction and sentence, the petitioners/accused persons filed an appeal before the Additional District and Sessions Court, Salem and the lower appellate court dismissed the appeal for default on the ground that the appellants were called absent and no representation. Aggrieved over the same, the present revision has been filed.

2. It is settled principle of law that for the absence of the appellants, the court cannot dismiss the appeal for default. If the appellants are absent, the only course open to the court is that the court may issue notice to the appellant, or appoint a legal aid counsel and decide the appeal on merits. Without doing so, the lower appellate court dismissed the appeal for default. In the above circumstances, the order of court below is liable to be set aside.

3. In the result, the criminal revision case is allowed and the order passed by the Additional District and Sessions Judge, Salem in C.A.No.159 of 2010 dated 23.05.2011 is set-aside and the matter is remitted back to the lower appellate court and the Additional District and Sessions Judge, Salem, is directed to restore the appeal and after issue notice to the appellant dispose the appeal, after giving sufficient opportunity to the petitioners/accused on merits.

11.01.2017

mrp

Index:Yes

To

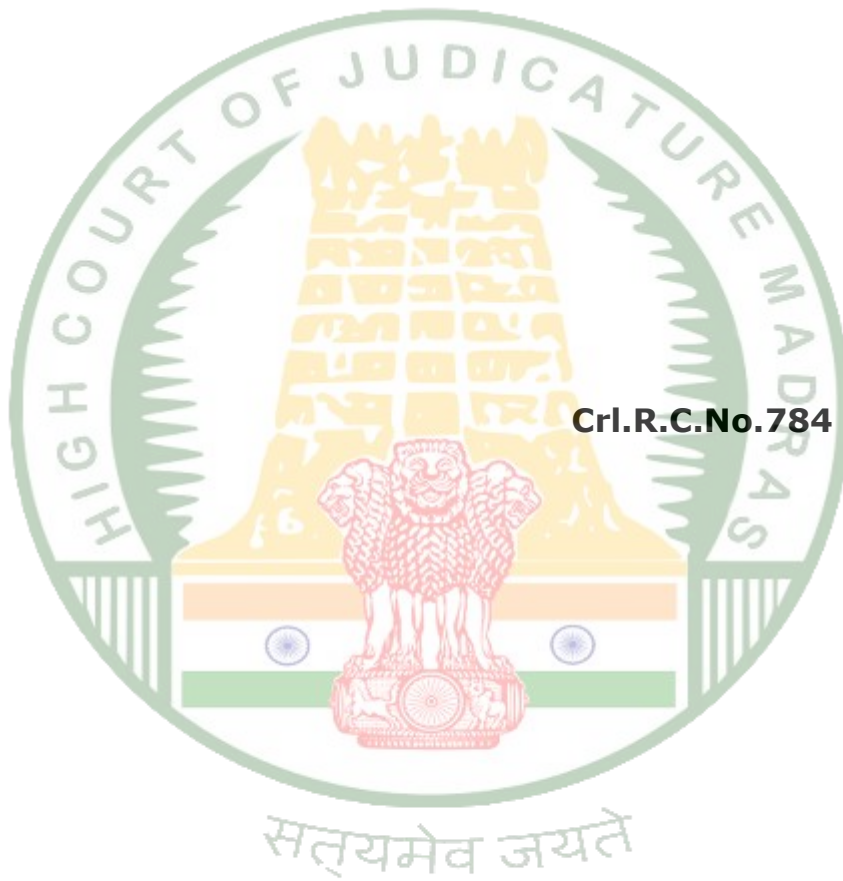
1. The Additional District and Sessions Judge,
Salem.
2. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

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V.BHARATHIDASAN, J.

mrp



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