

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM:

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

Cr1.R.C.No.1172 of 2010

and

M.P.Nos.1 and 2 of 2010

K.Thangamuthu
S/o.Karuma Gounder

.. Petitioner

Vs.

N.Muthusamy Gounder
S/o.Nalliyappa Gounder

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned I Additional District and Sessions Judge, Coimbatore, passed in C.A.No.111 of 2010 on 03.11.2010 confirming the judgment of learned Judicial Magistrate II, Pollachi, passed in C.C.No.544 of 2007 on 17.05.2010.

For Petitioner : Mr.V.S.Sivasundaram

For Respondent : No appearance

O R D E R

Learned counsel for petitioner informs that despite his causing notice to petitioner through RPAD on 12.08.2014, he has not heard from the party. Learned counsel submits that he has no instructions.

2. Respondent has been served but there is no appearance either in person or through counsel.

3. This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 6 months S.I.

4. Respondent/complainant moved a prosecution informing that petitioner/accused borrowed a sum of Rs.2,50,000/- from him and towards repayment thereof, cheque dated 17.09.2007 drawn on Indian Bank, Pollachi, stood issued to him, which upon

presentation was returned unpaid for the reason "Account closed". 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, respondent/complainant examined himself and marked four exhibits. None were examined on behalf of the defence nor were any exhibits marked.

6. On appreciation of materials before it, trial Court, under judgment in C.C.No.544 of 2007 dated 17.05.2010, convicted petitioner and sentenced him to 6 months S.I. The appeal preferred by petitioner in C.A.No.111 of 2010 on the file of learned I Additional District and Sessions Judge, Coimbatore, came to be dismissed under judgment dated 03.11.2010. Hence, this revision.

7. On a perusal of papers, this Court finds that the petitioner faced prosecution for offence u/s.138 of the Negotiable Instruments Act. The main contention of petitioner/accused before Courts below was that the trial Court has not afforded sufficient time to cross-examine the complainant and that the complainant is not a man of means to give Rs.2,50,000/- as debt, that too, without obtaining any security for such amount. The said contention was negated by appellate Court on the reasoning that the complainant was first examined on 03.07.2009, questioned u/s.313 Cr.P.C. on 24.07.2009, arguments were heard on 23.04.2010 and judgment was pronounced on 17.05.2010 and the petitioner/accused has failed to avail the opportunity given him to cross-examine the complainant. Further, without cross-examining the complainant, it was not open to petitioner/accused now to contend that the complainant is not a man of means to afford such a huge amount as debt. Courts below have found that the complainant clearly has established his case and accordingly, convicted the petitioner/accused. This Court finds absolutely no reason to interfere with the judgments under challenge.

The Criminal Revision Case shall stand dismissed. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

gm

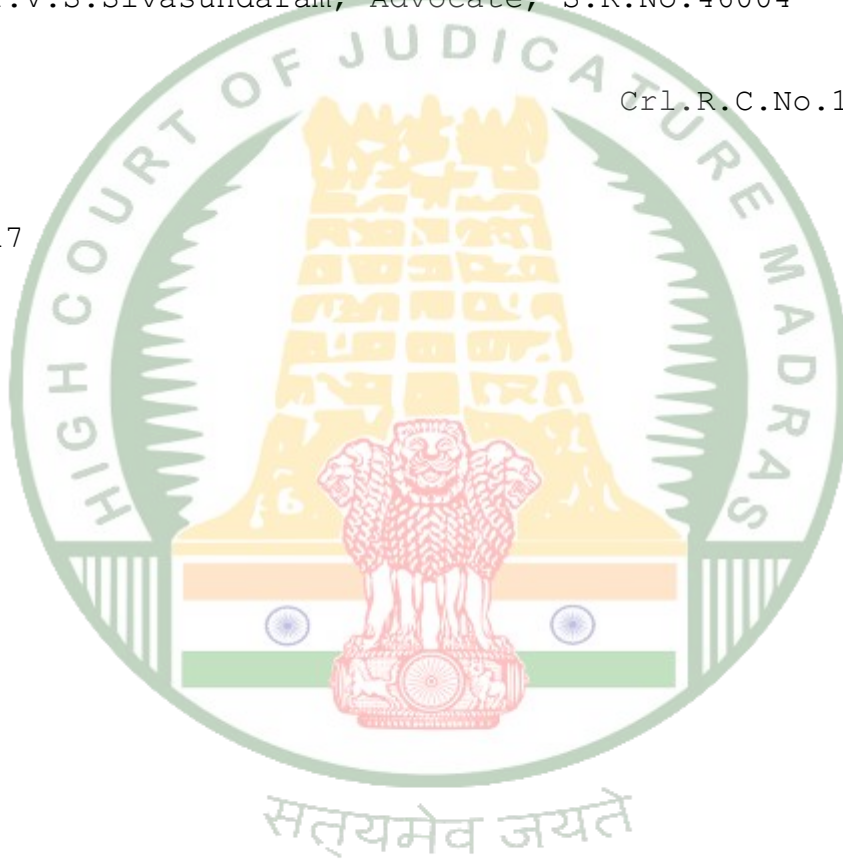
To

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate II,
Pollachi.
3. Thro' The Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.V.S.Sivasundaram, Advocate, S.R.No.46004

Crl.R.C.No.1172 of 2010

KGK (CO)
CS/11/08/17



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