

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

Coram:

The Hon'ble Mr. Justice C.T. Selvam

**Crl.R.C. No. 1308 of 2010
and
Crl.M.P.No. 2 of 2010**

Mr. Jeyaselan
S/o Sivaprakasam Pillai

...Petitioner/Appellant/Accused

Versus

Mr. Mohamed Thamim
S/o Mohammed Moideen

...Respondent/Respondent/Complainant

This Criminal Revision filed under Sections 397 and 401 of Code of Criminal Procedure praying to call for the records relating to the judgment dated 02.11.2010 made in C.A.No.98/2006 on the file of the Court of Sessions Judge, Nagapattinam in confirming the judgment dated 03.07.2006 made in S.T.C.No.1737/2004 on the file of the Judicial Magistrate No.I, Mayiladuthurai and set aside the same.

For Petitioner : Mr. S. Vadivel Murugan
Legal Aid Counsel

For Respondent : No appearance

ORDER

This Criminal Revision is filed against the judgment in C.A.No.98/2006 dated 02.11.2010 passed by Sessions Judge, Nagapattinam confirming judgment of the Judicial Magistrate No.I, Mayiladuthurai passed in S.T.C.No. 1737 of 2004 on 03.07.2006.

2. Respondent/complainant is the Managing Partner of a concern by name National Garments. He moved prosecution informing that petitioner/accused purchased garments to the tune of Rs.40,050/- and a cheque bearing No. 456656 dated 10.09.2003 in a sum of Rs.40,050/- drawn on South Indian Bank, Nagapattinam Branch, stood issued to him by petitioner/accused towards outstandings, which upon presentation was returned unpaid for the reason 'insufficient funds'. Respondent/complainant following the procedure envisaged u/s.138 of the Negotiable Instruments Act, preferred a complaint. The complaint was taken on file in S.T.C No.1737/2004 on the file of learned Judicial Magistrate No.1, Mayiladuthurai.

3. Before trial Court, respondent examined one witness and no exhibits were marked. On the side of defence, 2 witnesses were examined and 4 exhibits were marked. On appreciation of materials before it, trial Court rendered a finding of conviction and sentenced petitioner/accused to 3 months S.I. and fine of Rs.5,000/- i/d 1 month S.I. There against, petitioner/accused preferred C.A.No.98 of 2006 on the file of the Court of Sessions Judge, Nagapattinam, which came to be dismissed under judgment dated 02.11.2010. Hence, this revision.

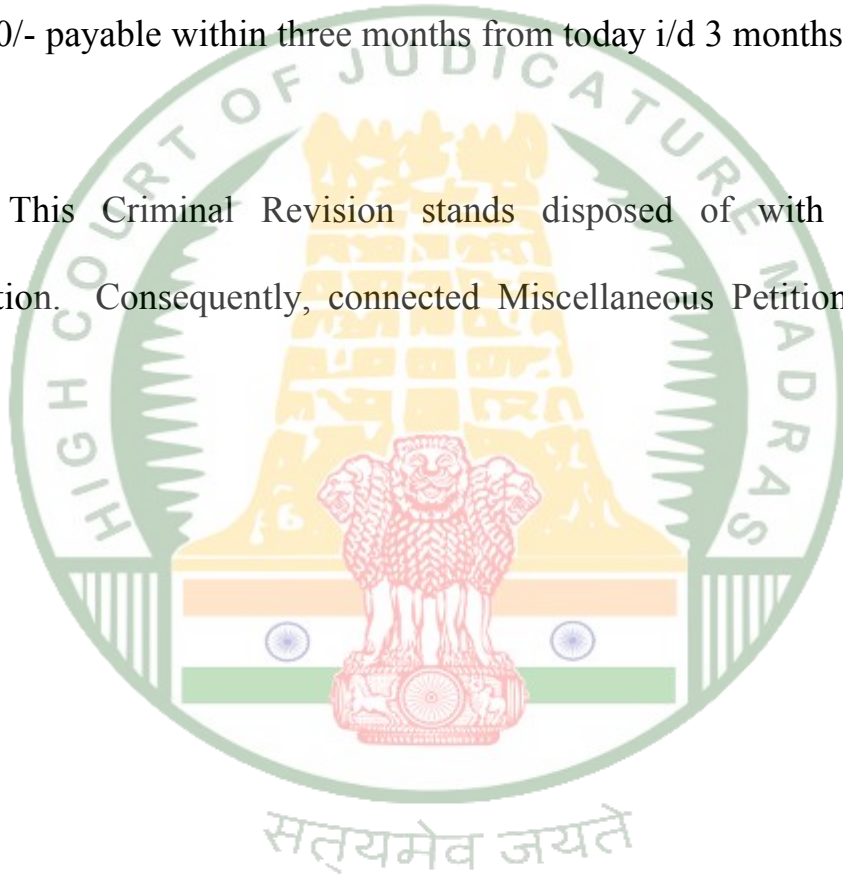
4. Heard learned counsel for petitioner as also perused materials on record. There is no appearance for respondent.

5. In convicting the accused, Courts below have found that the issue of cheque has not been disputed and the accused has also admitted the transaction between him and the complainant. Once the issue of cheque has not been disputed then, it is for the accused to establish that it is not been given towards legally enforceable debt. The contention of accused before the Appellate Court that there was material alteration has been negated by

Appellate Court on the reasoning that though there was a correction of the amount in figures, it is seen that the accused himself had made the correction and signed there against and further in words, the correct amount has been mentioned. The next contention of accused that no notice has been served on him has been rejected on the ground that as per 27 of the General Clause Act, once the registered notice was sent to the correct address, it will be deemed service of notice. Admittedly, in this case, the address in the cover has not been denied. Further, it was also not established by the accused that he left the place and settled somewhere else. There was not even a suggestion in his evidence to the effect that he was not available in the address at the relevant time. On the above reasoning and for other reasons, Courts below arrived at a finding that respondent/complainant has proved his case and the petitioner/accused has failed to establish his case and accordingly convicted appellant/accused. This Court finds no reason to interfere with judgments under challenge. However, taking into consideration the submission of learned counsel for petitioner that petitioner is now 75 years and he is in frail health, this Court is of the view that requiring petitioner to effect payment of enhanced fine instead of imprisonment would avoid him serious consequences.

6. Accordingly, this Court while confirming the finding of conviction, modifies the sentence to one of payment fine in a sum of Rs.45,500/- payable within three months from today i/d 3 months S.I.

This Criminal Revision stands disposed of with the above modification. Consequently, connected Miscellaneous Petition is closed. No costs.



28.07.2017

Note to Office : Issue Order Copy by 28.08.2017

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Index : Yes/No

Internet : Yes/No

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C.T. SELVAM, J.,

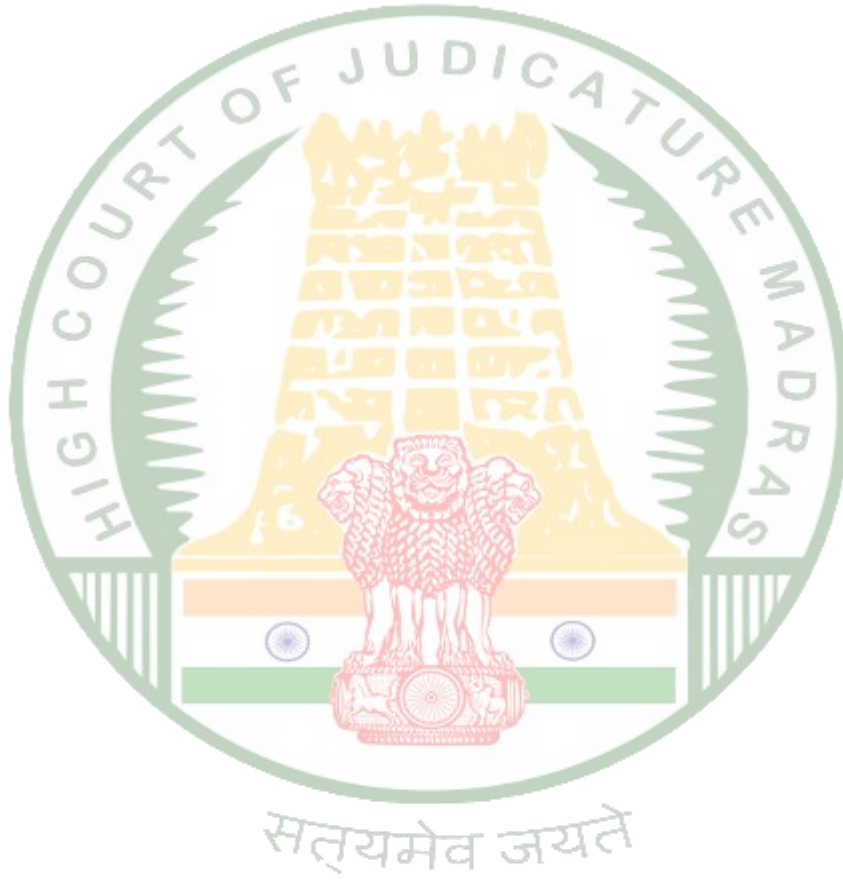
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