

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

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

Crl.R.C.No.1076 of 2016
and
Crl.M.P.Nos.9214 and 9216 of 2016

Shanthi

.. Petitioner

vs.

V.Mounitharan

.. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment dated 16.03.2016 passed by the learned 1st Additional Sessions Judge, Erode in Criminal Appeal No.150 of 2015 confirming the judgment dated 03.11.2015 passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in STC No.329 of 2013 dated 03.11.2015 by the learned Fast Track Judicial Magistrate No.1, Erode.

For Petitioner : No Appearance

For Respondent : Mr.C.S.Saravanan

O R D E R

Today, the matter is listed under the caption 'for orders'.

2. This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s. 138 of N.I. Act and sentencing him to 6 months, S.I and fine of Rs.5,000/- i/d 15 days S.I. There against, petitioner preferred an appeal in C.A.No.150 of 2015 on the file of learned I Additional Sessions Judge, Erode, which came to be dismissed under judgment dated 16.03.2016. Hence, the present revision has been filed.

3. Respondent, moved a prosecution informing that the petitioner borrowed a sum of Rs.2,50,000/- from the complainant for his urgent needs and issued a post dated cheque bearing No.856998 dated 19.04.2013 drawn on Indian Overseas Bank, Periyasemur Branch, which upon presentation was returned unpaid for the reason "insufficient funds". Respondent/complainant caused statutory notice and following the procedure envisaged

under Section 138 of the N.I. Act, a complaint has been filed. The complaint was taken on file in S.T.C.No.329 of 2013 on the file of the Judicial Magistrate Fast Track Court No-I, Erode.

4. Before the trial Court, respondent examined himself and marked four exhibits. None were examined on behalf of the defence nor were any exhibits marked an appreciation of materials before it, trial court, under judgment dated 03.11.2015, convicted petitioner for offence u/s.138 N.I. Act and sentenced to undergo a simple imprisonment for 6 months and to pay a sum of Rs.5,000/- i/d 15 days. S.I.

5. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials on record.

6. In convicting the petitioner, Courts below have found as follows:

The petitioner/accused himself admitted the signatures found in Ex.P1, cheque and borrowal of money. The contention of petitioner/accused that the cheque issued towards security purpose has been misused by respondent/complainant has been rejected on the reasoning that the evidence of memo (Ex.P2) issued by the State Bank of Mysore, Erode Branch, was to the effect that the cheque in dispute was issued in the year 2013 and thereafter, the petitioner has not issued any such kind of cheques, but, it is open to customers to use the cheque at any point of time. Therefore, it is clear that the cheque had been issued for repayment of the debt. As rightly noted by Courts below, the present is a case where no defence evidence was let in and no material has been placed to support such contention. The very initial presumption available u/s.139 of the Negotiable Instruments Act stands not rebutted and in such circumstances, there is no need for the respondent to prove the debt. Therefore, the further contention of learned counsel that there absolutely is no material to inform the particulars of the debt is not sustainable.

7. On the above reasoning and for some other reasons, Courts below arrived at a finding of conviction. This Court finds no error in the judgments under challenge.

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

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

rka/kv

To

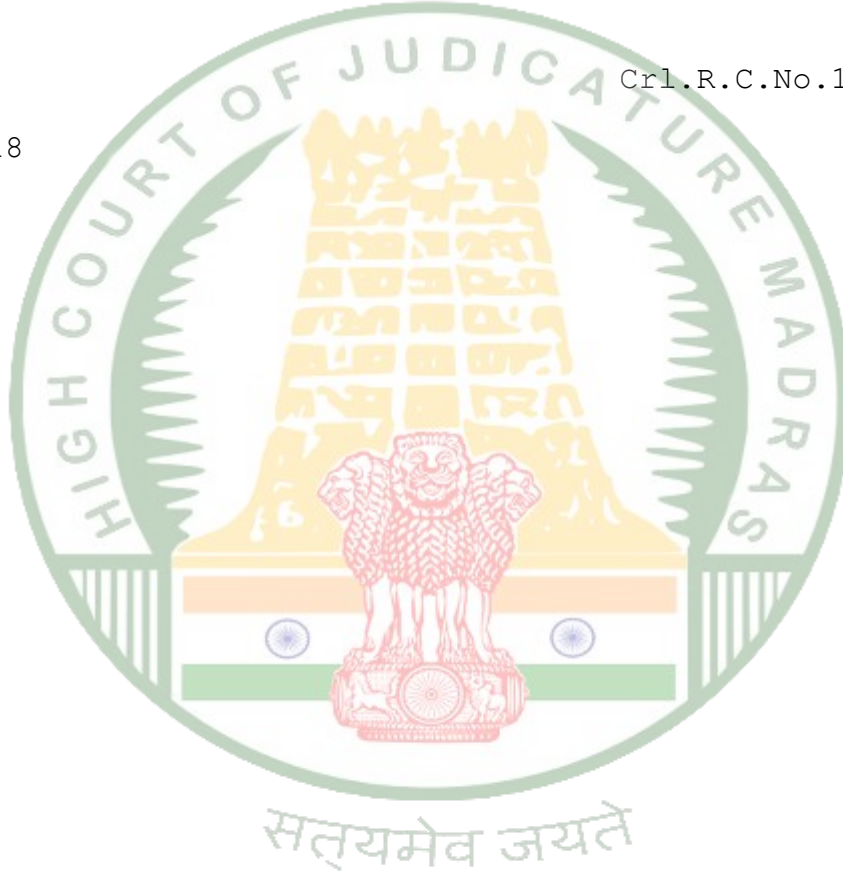
1. The Judicial Magistrate,
Fast Tract Court - I, Erode
2. The 1st Additional Sessions Judge,
Erode
3. The Chief Judicial Magistrate, Erode

+lcc to Mr.C.Rajaguru, Advocate, S.R.No.82995

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.82241

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