

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

CrI.R.C.No.1098 of 2016

and

CrI.M.P.Nos.9536 and 9537 of 2016

T.Saravanaboopathy

... Petitioner

Vs.

1. The State rep. by
The Public Prosecutor,
Coimbatore.

2. A.P.Paramasivam

... Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C. to set aside the order dated 23.08.2016 passed in CrI.M.P.No.1844 of 2016 in C.A.No.104 of 2016 on the file of the learned Principal District and Sessions Judge, Coimbatore.

For Petitioner : Mr.Kingsly Solomon J

For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor
for R1

ORDER

This Revision has been filed against the order passed by

<http://www.judis.nic.in> the learned Principal District and Sessions Judge, Coimbatore

made in Crl.M.P.No.1844 of 2016 dated 23.08.2016.

2.The petitioner herein is the accused in the main case as against whom the trial Court has given conviction and sentence under Section 138 of the Negotiable Instruments Act, to the extent of Simple Imprisonment for one year.

3.It seems that on the date of pronouncement of the Judgment by the trial Court, the petitioner had not chosen to appear before the trial Court and therefore, the same had been recorded.

4.Subsequently, when the petitioner moved before the first Appellate Court assailing the said conviction by way of Criminal Appeal, simultaneously the petitioner has also filed a petition to suspend the sentence awarded against him by the trial Court.

5.While considering the petition to suspend the sentence, the Appellate Court, after having considering the fact that the petitioner did not appear before the trial Court on the date of pronouncement of the Judgment and has taken a view that if

this kind of practice is allowed, then no accused would appear before the trial Court, at the time of pronouncement of the orders and therefore, considering the said aspect, the learned first Appellate Judge had rejected the said application filed by the petitioner to suspend the sentence by order dated 23.08.2016 as against which, the present Revision has been filed.

6.I have heard Mr.Kingsly Solomon J, learned counsel appearing for the petitioner.

7.The learned counsel appearing for the petitioner would submit that after the impugned order was passed, the petitioner and the 2nd respondent had a talks of settling the issue and with a result, the issue has been settled between the parties, pursuant to which, both of them had entered into an Agreement dated 01.09.2016.

8.Learned counsel appearing for the petitioner has also produced the said Agreement entered between the parties dated 01.09.2016. On perusal, it reveals that the petitioner

and the 2nd respondent have decided to settle the issue amicably and according to the settlement, the entire amount of Rs.3,00,000/- payable by the petitioner had been paid by way of settling a property, belongs to the petitioner on 02.08.2016 and the said documentation for settling the property had been registered in the Sub Registrar Office, Peelamedu, Coimbatore.

9. Based on the said settlement of property, since the amount due payable by the petitioner had been recovered or received, the respondent as well as the petitioner had entered into a Compromise Deed and according to which, the 2nd respondent would not press upon the further proceedings in C.C.No.390 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Coimbatore, wherein the conviction was actually given against the petitioner.

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10. In view of the said submission made by the learned counsel, this Court by earlier order dated 08.09.2016 directed to serve notice on the 2nd respondent. Though notice had been served on the 2nd respondent privately and based on which, the

name and full address of the 2nd respondent having been shown in the cause list, the 2nd respondent has not chosen to appear before this Court. Even today, when the matter was called, none present on behalf of the 2nd respondent either in person or through pleader.

11. In the circumstances, since the 2nd respondent, after having received the entire money due from the petitioner, has settled the matter and in this regard, a Memorandum of Understanding had been entered into between the parties and the same has been reduced in writing by Agreement dated 01.09.2016, by considering the said agreement and also by recording the said agreement, this Court is inclined to set aside the order impugned.

12. Accordingly, the impugned order is set aside on the first Appellate Court is directed to take up these developments and proceed further in accordance with law towards compounding the offence between the parties.

13. It is made clear that in order to compel the presence

of the second respondent, summons can be issued to him and if the second respondent does not respond to such summons to be issued by the first Appellate Court, even warrant can be issued against the second respondent, compelling his presence to record compromise arrived at between the parties.

With these directions, the Revision is allowed and the matter is remitted back to the first Appellate Court with the aforesaid directions. Consequently, connected Miscellaneous Petitions are closed.

21.08.2017

Index :yes/no
Internet :yes/no
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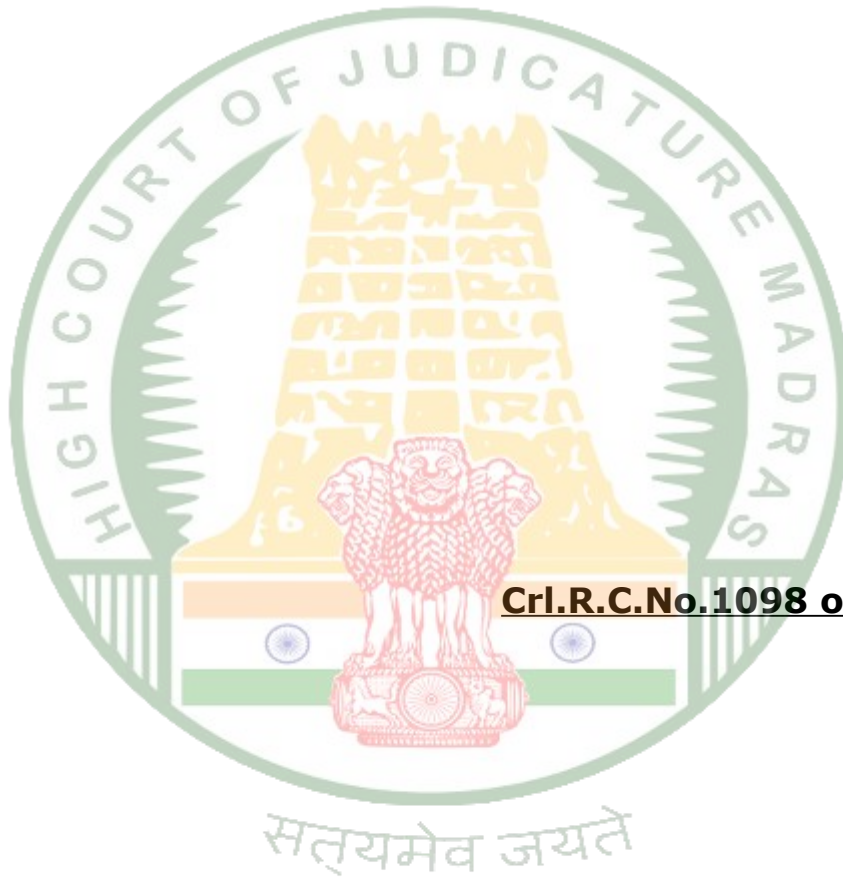
1.The Principal District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Coimbatore.

3.The Public Prosecutor,
Coimbatore.

R. SURESH KUMAR, J,

AT



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