

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Cr1.R.C.No.731 of 2016

S.Kannan

... Petitioner

Vs

Ramesh Mardia

... Respondent

Prayer:- Criminal Revision filed under Section 397 r/w Section 401 of Code of Criminal Procedure praying to call for the records in C.A.No.8 of 2012, dated 18.04.2016, on the file of the IV Additional Sessions Judge, Chennai and confirming the judgment passed in C.C.No.20 of 2009, dated 19.12.2011 on the file of learned VIII Metropolitan Magistrate, George Town, Chennai and set aside the same by allowing this Criminal Revision Petition.

For petitioner : No appearance

For Respondent : Mr.M.C.Joseph

for M/s.Chennai Law Associates

O R D E R

This Criminal Revision petition is preferred to call for the records in C.A.No.8 of 2012, dated 18.04.2016, on the file of the IV Additional Sessions Judge, Chennai and confirming the judgment passed in C.C.No.20 of 2009, dated 19.12.2011 on the file of learned VIII Metropolitan Magistrate, George Town, Chennai.

2. The complainant sold and delivered to the accused electrical coils (cables) covered by the invoice (Ex.P.1) of the value of Rs.3,62,906/-. Towards discharge the said liability, the accused issued a cheque (Ex.P.2) dated 27.08.2008 for Rs.3,62,906/- drawn on Axis Bank Ltd., Anna Nagar Branch Chennai 600 102 in favour of the complainant. When the said cheque was presented before the complainant's banker Kotak Mahindra Bank Ltd., Parrys Branch, Chennai 1 for collection, the same was returned with an endorsement "insufficient fund" on 27.08.2008. Therefore, the complainant had issued statutory notice (Ex.P.4) to the accused on 30.08.2008 and the same was received by the

accused on 13.09.2008. The accused sent telegram (Ex.P.6) to the complainant on 01.09.2008. Since, the accused did not pay any amount, the complainant had filed private complaint against the accused under Section 138 of the Negotiable Instruments Act.

3. During the course of trial, on the side of the complainant, one witness was examined as PW1 and Exs.P1 to P6 were marked. On the side of defence, no witness was examined and Ex.D.1 was marked.

4. The trial Court convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for six months and the petitioner was directed to pay compensation of Rs.3,60,000/- within one month to the complainant. Challenging the same, the accused preferred an appeal and the lower Appellate Court confirmed the judgment of the trial Court and dismissed the appeal. Challenging the same, the present Criminal Revision Petition has been filed by the petitioner/accused.

5. There is no representation for the petitioner. This Court perused the materials available on record. In the grounds of revision, it is stated that the alleged invoice bills were written by the respondent himself, there is no specific mention about the alleged liability of the petitioner/accused and as such, the order of the learned Magistrate is liable to be set aside. The respondent has not produced any concrete evidence showing the existence of legally enforceable liability of the petitioner. The respondent had miserably failed to prove the basic requirements under Section 138 of the Negotiable Instruments Act.

6. It is further stated in the grounds of revision that the trial Court failed to consider the rebuttal of the petitioner as per the provisions contained in Section 139 of the Negotiable Instruments Act. The alleged telegram was not issued by the respondent and the respondent had not produced any evidence to prove the same. The petitioner has cogently rebutted the presumption under Section 139 of the Negotiable Instruments Act by pointing out the absence of documentary proof. The admitted case of the respondent before the learned Magistrate is that he used to take blank cheques from the parties who come first time to do business with him and the same has been illegally utilised by the respondent. The learned Magistrate failed to distinguish the deposition of PW1 and erred in coming to the conclusion that the petitioner has issued the alleged cheques for the alleged liability and as such, the judgment of the learned Magistrate as well as the lower Appellate Court is not reasonably speaking judgment and as such, they are liable to be set aside. Hence the

petitioner prayed to allow the revision.

7. This Court heard the submissions of the learned counsel for the respondent and perused the materials available on record.

8. In convicting the petitioner, the Courts below have found that the petitioner has admitted the signature in the said cheque and the respondent is entitled for initial presumption under Section 139 of the Negotiable Instruments Act. It was further observed by the Lower Appellate Court that the evidence of the respondent is cogent, trustworthy and remained unshaken by the cross examination of the petitioner/accused. Despite detailed cross examination, the petitioner could not elicit any fact in his favour. Ex.D.1 First Information Report has also been filed for registration of offences under Sections 420 & 506 (i) IPC against the petitioner. The petitioner failed to prove his defence that he had paid the amount in cash at the time of purchase of goods and that the respondent had used the cheque given for security purpose and the same was misused by the respondent. Therefore, it has to be concluded that the petitioner/accused did not rebut the presumption under Section 139 of the Negotiable Instruments Act.

9. The Courts below have considered the materials available on record and convicted the accused. This Court finds no error in the judgments under challenge.

10. The Criminal Revision Petition shall stand dismissed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

dpq

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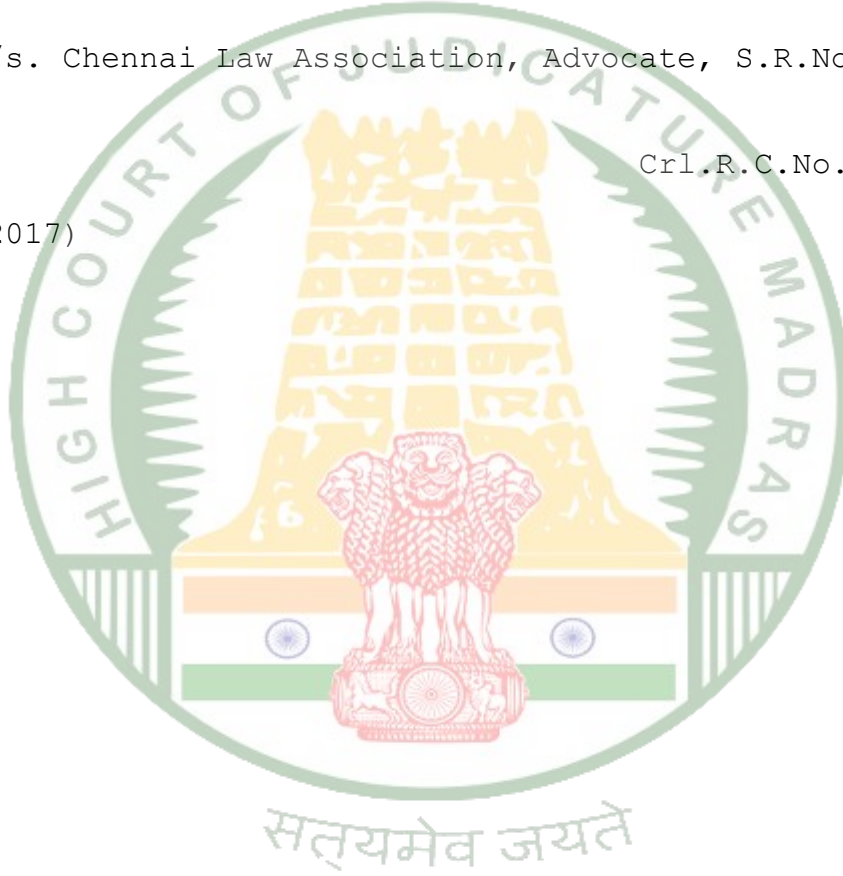
To

1. The VIII Metropolitan Magistrate,
George Town, Chennai.
2. The IV Additional Sessions Judge,
City Civil Court,
Chennai.

+1cc to M/s. Chennai Law Association, Advocate, S.R.No.23623

Cr1.R.C.No.731 of 2016

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RS(03/07/2017)



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