

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.No.888 of 2016

V.George

... Petitioner

Vs.

M.L.Chenniappan

... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. to set aside the judgment of learned IV Additional Sessions Judge, Coimbatore, passed in C.A.No.58 of 2013 on 28.11.2013 confirming the judgment of learned Judicial Magistrate, Mettupalayam, passed in C.C.No.201 of 2006 on 18.03.2013.

For Petitioners : Mr.R.Nalliyappan
For Respondent : Mr.Kadarkarai

O R D E R

This revision arises against the judgment of Appellate Court confirming the conviction of the accused by the trial Court for the offence u/s. 138 of Negotiable Instruments Act, while modifying the sentence of 1 year R.I to 6 months S.I and also confirming the compensation of Rs.25,000/- i/d 3 months S.I.

2. Respondent/complainant moved prosecution informing that petitioner/accused borrowed a sum of Rs.96,500/- on 26.02.2006 from him and towards repayment thereof, cheque bearing No.284527 dated 26.05.2006 drawn on State Bank of India, Mettupalayam Branch, stood issued to him, 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 Negotiable Instruments Act, a complaint had been filed.

3. Before the trial Court, respondent/complainant examined himself and marked five exhibits. Petitioner/accused examined four witnesses and marked one exhibit.

4. On appreciation of materials before it, the trial Court, under judgment dated 18.03.2013, convicted the petitioner and sentenced him to undergo 1 year R.I and directed him to pay compensation of Rs.25,000/- i/d 3 months S.I. The appeal

preferred by petitioner in C.A.No.28 of 2013 on the file of learned IV Additional District and Sessions Judge, Coimbatore, was disposed of by only modifying the sentence to 6 months S.I and confirming the direction for payment of compensation of Rs.25,000/- i/d 3 months S.I under judgment dated 28.11.2013. Hence, this revision.

5. Heard the learned counsel for petitioner and the learned counsel for respondent.

6. This revision shall stand allowed for the following reasons:

(i) It is the case of the petitioner that the cheque giving rise to the action was left with the respondent/complainant as security for loan for Rs.75,000/- obtained in the year 1992. In evidence the respondent/complainant has admitted to the transaction of loan of Rs.75,000/- in the year 1992 and of having obtained an equitable mortgage and demand promissory note. The respondent has admitted to being a financier.

(ii) The cheque is a non MICR instrument. D.W.3.- Bank Manager has been examined towards establishing that the petitioner has obtained fresh cheque books even of the year 2004 and 2006. The respondent/complainant has admitted to the signature in the cheque and the writings there upon being of different ink.

(iii) Learned counsel for respondent has sought to impress upon this Court that an admission had been obtained from D.W.3 Bank Manager that there is no bar for usage of cheques issued by the bank in the year 1992. He submits that the defence of the petitioner is that owing to a minor dispute arising between the parties in the course of the complainant engaging the services of the petitioner, a lorry broker, the complaint has been filed by misusing the cheque inadvertently left behind with him, in an act of vengeance. Learned counsel submitted that any prudent person would have issued a reply to the statutory notice if the defence was true.

7. We are of the considered view that petitioner has shifted the initial burden placed upon him u/s. 139 of the N.I. Act and hence it is for the respondent/complainant to prove his debt which he has failed to do.

In the result, the Criminal Revision shall stand allowed and the judgment of learned IV Additional District Judge, Coimbatore, passed in C.A.No.58 of 2013 on 28.11.2013, confirming the judgment of learned Judicial Magistrate,

Mettupalayam, passed in C.C.No.201 of 2006 on 18.03.2013, shall stand set aside. Petitioner is acquitted of charges. Fine amount, if any, paid by him shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

-s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

To

1.The IV Additional Sessions Judge, Coimbatore,

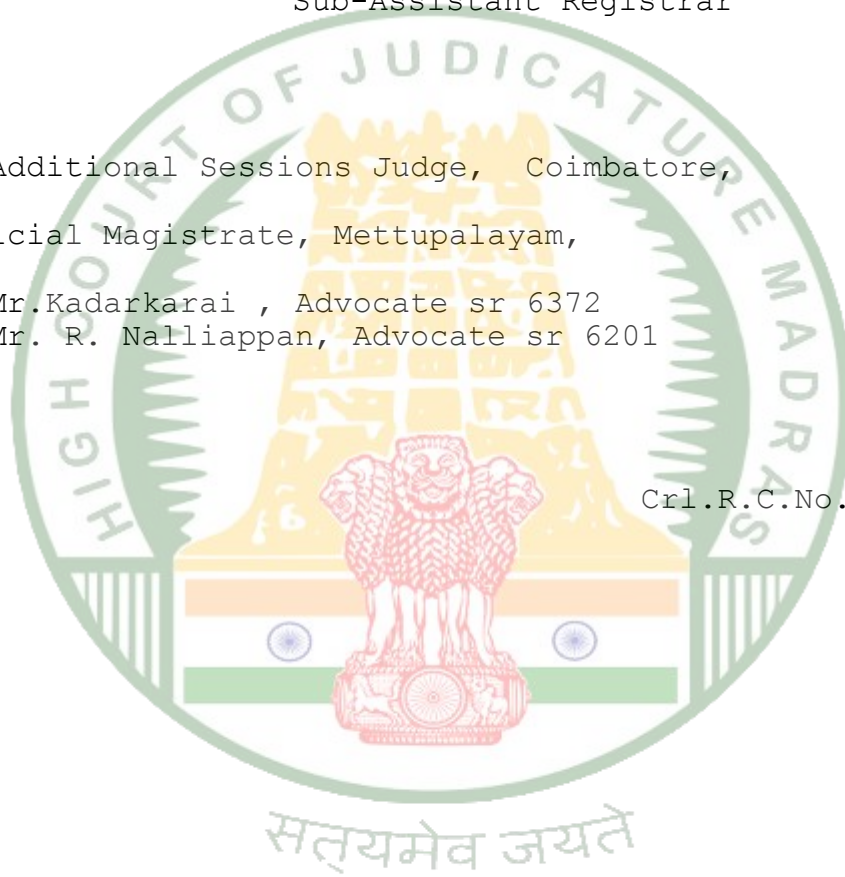
2.The Judicial Magistrate, Mettupalayam,

+1 CC to Mr.Kadarkarai , Advocate sr 6372

+1 CC to Mr. R. Nalliappan, Advocate sr 6201

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