



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2017

CORAM

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C(MD)No.552 of 2017

1.Porkaipandiyan

2.Vasanthi

.. Petitioners/Petitioners/Appellants

Vs.

Subbulakshmi

.. Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C., to call for the records relating to the order, dated 22.06.2017 in Cr.M.P.(MD).No.2778 of 2017 in C.A.No.38 of 2017, on the file of the learned Principal Sessions Court, Tirunelveli and set aside the condition in so far as the petitioners are directed to deposit a sum of Rs.2,00,000/- before the learned Judicial Magistrate Court, Sivagiri, to the credit of C.C.No.91 of 2013.

For Petitioners : Mr.M.S.Jeyakarthik

For Respondent : Mr.S.Ilangovan

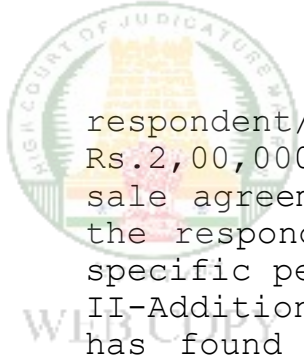
ORDER

The petitioners arrayed as accused in C.C.No.91 of 2013 on the file of the learned Judicial Magistrate, Sivagiri, for the offence under Section 138 of Negotiable Instruments Act. The trial Court has convicted the petitioners/accused under Section 138 of Negotiable Instruments Act and sentenced them to undergo simple imprisonment for one year and to pay the cheque amount of Rs.40,00,000/- (Rupees forty lakhs only) as compensation within two months to the complainant. Challenging the above said conviction and sentence the petitioners/accused filed an appeal in C.A.No.38 of 2017 before the learned Principal Sessions Judge, Tirunelveli and also filed a petition to suspend the sentence. The lower Appellate Court suspended the sentence on condition that the petitioners/accused to deposit a sum of Rs.2,00,000/- before the trial Court to the credit of C.C.No.91 of 2013. Now, challenging the same, the present revision has been filed.

2. I have heard Mr.M.S.Jeyakarthik, learned counsel appearing for the petitioners and Mr.S.Ilangovan, learned counsel appearing for the respondent and also perused the records carefully.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The learned counsel for the petitioners would contend that the petitioners never borrowed any amount from the



respondent/complainant and earlier the petitioners borrowed a sum of Rs.2,00,000/- and at that time, they gave a cheque and executed a sale agreement for security purpose. Now, using the sale agreement, the respondent/complainant along with her husband filed a suit for specific performance in O.S.No.25 of 2014 on the file of the learned II-Additional District Judge, Tirunelveli, wherein the Civil Court has found that there is no actual sale transaction and the sale agreement has been executed only for security purpose. The Civil Court also found that the related documents have not been placed before the Court. Now the petitioners have filed a petition seeking to file additional evidence before the lower Appellate Court. The Civil Court directed the first petitioner to pay a sum of Rs.13,00,000/- to the respondent/complainant within one month towards the advance amount received by the first petitioner for executing the sale agreement. Now, Execution Petition is also pending against the first petitioner. The first petitioner is a coolie, the petitioners are not in a position to comply with the condition imposed by the trial Court to deposit the sum of Rs.2,00,000/-.

4. Per contra, the learned counsel appearing for the respondent submits that the above Civil Suit is regarding money transaction between the parties and the present case is regarding the amount borrowed by the petitioner to the tune of Rs.40,00,000/-. Eventhough the trial Court ordered a compensation of Rs.40,00,000/-, the condition imposed by the Civil Court directing the petitioner to deposit Rs.2,00,000/-, is not onerous condition.

5. I have considered the rival submissions and the materials available on record.

6. Considering the fact that already a civil dispute is pending between the parties, and the petitioner also directed to deposit a sum of Rs.13,00,000/-, the condition imposed by the Court below, dated 22.06.2017, in Cr.M.P.(MD).No.2778 of 2017 in C.A.No.38 of 2017, is modified to the effect that the petitioners are directed to produce security by way of immovable property for a sum of Rs.2,00,000/- to the credit of C.C.No.91 of 2013, before the trial Court, and the other conditions made in the order shall remain intact. The Principal Sessions Court, Tirunelveli, is directed to dispose of the appeal in C.A.No.38 of 2017, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

7. With the above direction, this Criminal Revision Case is allowed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/



To

1. The Principal District and Sessions Judge,
Tirunelveli.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.S.JEYAKARTHIK Advocate in SR. No. 77985

+1cc to Mr.S.ILANGO VAN Advocate in SR. No. 77809

PJL

JS/JC/SAR.2/3.10.2017/3P-5C

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