

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Criminal Appeal No.721 of 2009
& CrI.MP.No.9030 of 2018

Syed Rafeek

.. Appellant

.. Vs ..

Peter

.. Respondent

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C., against the Judgment in Criminal Appeal No.10/2009 dated 27.07.2009 on the file of the Principal Sessions Court, Villupuram, reversing the Judgment in C.C.No.148/2007 dated 17.04.2009 on the file of the Judicial Magistrate No.2, Tindivanam.

For Appellant : Mr.Antony Jesus

For Respondent : Mr.D.S.Thirumavalavan

JUDGMENT

The Criminal Appeal has been filed against the Judgment in Criminal Appeal No.10/2009 dated 27.07.2009 on the file of the Principal Sessions Court, Villupuram, reversing the Judgment in C.C.No.148/2007 dated 17.04.2009 on the file of the Judicial Magistrate No.2, Tindivanam.

2. The appellant herein has filed a case under Section 138 of Negotiable Instruments Act, against the respondent/accused on the file of the learned Judicial Magistrate No.2, Tindivanam.

3. After hearing both sides, the learned Judicial Magistrate No.2, Tindivanam, convicted the accused/respondent under Section 138 of Negotiable Instruments Act and sentenced to undergo six months simple imprisonment with fine of Rs.2,000/- in default to undergo three months simple imprisonment. Further the accused/respondent has to pay the compensation of Rs.16,83,000/- to the appellant within a period of two months.

4. Aggrieved against the order of the learned Judicial Magistrate No.2, Tindivanam in C.C.No.148/2007 dated 17.04.2009 the accused/respondent has preferred the Criminal

Appeal before the learned Principal Sessions Court, Villupuram, and the same was allowed. The respondent herein has been acquitted on the ground that the case has not been proved under Section 138 of Negotiable Instruments Act.

5. Against the Judgment of the learned Principal Sessions Court, Villupuram, in C.A.No.10 of 2009, the appellant herein has preferred the present Criminal Appeal before this Court.

6. During the pendency of the Criminal Appeal, the respondent herein has died. Since the charge against the respondent is abated, the appellant has taken steps to implead the legal heirs of the respondent.

7. The learned counsel for the respondent would fairly submitted that the appellant cannot prosecute the legal heirs of the respondent, to recover the amount which was involved in the case.

8. At this juncture, the learned counsel for the appellant seeks permission of this Court to withdraw the Criminal Appeal with liberty to file Civil Suit on the same cause of action. Endorsement made by the learned counsel for the appellant is extracted hereunder :

"The Lower Court convicted the accused and also granted compensation. In appeal, the accused acquitted. The Criminal Revision filed against the accused against acquittal. While the appeal was pending, the accused reported dead and for the legal heirs notice have been sent. At this stage appellant prays that to file Civil Suit on the same cause of action and without affecting the question of limitation to collect the cheque amount and liberty may be given to file suit against the document and LR's to proceed against the property of the deceased accused and the appeal is withdrawn"

9. In view of the limited prayer, the Criminal Appeal is dismissed as withdrawn. However, liberty is granted to the appellant to work out his remedy in the manner known to law. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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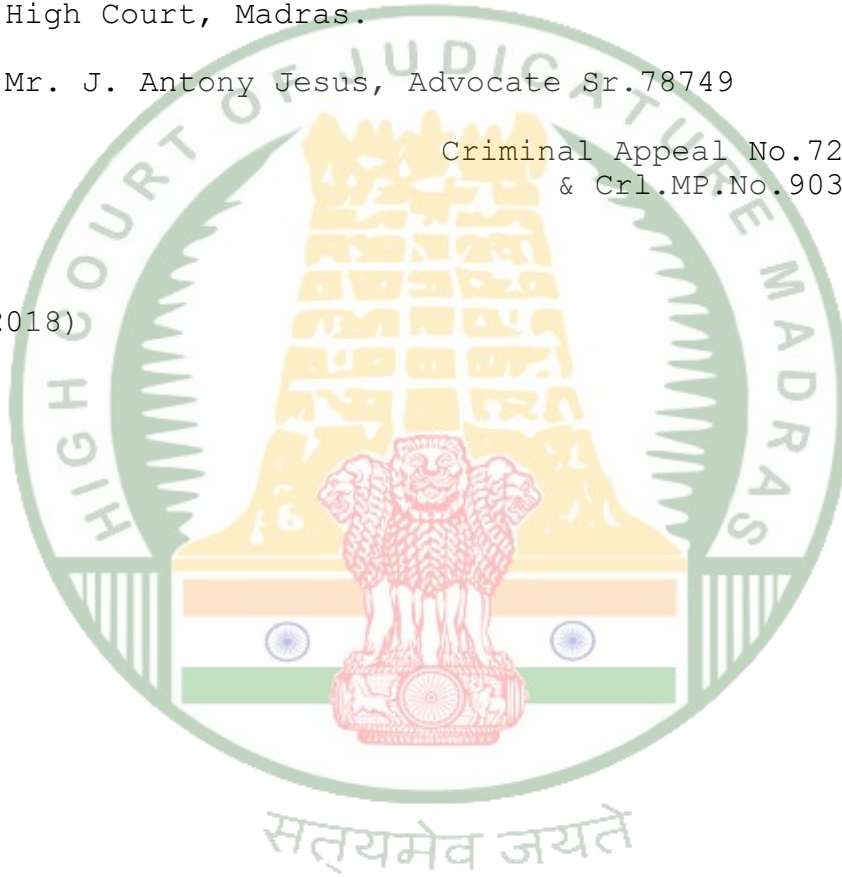
1. The Principal Sessions Judge, Villupuram.
2. The Judicial Magistrate No.II, Tindivanam.

Copy to: The Section Officer,
Criminal Records Section,
High Court, Madras.

+ 1 cc to Mr. J. Antony Jesus, Advocate Sr.78749

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