

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.No.203 of 2011

K.Periyasamy

.. Appellant

Vs.

T.Duraipandian

.. Respondent

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment dated 03.12.2010 made in C.A.No.104 of 2010 on the file of the Additional District and Sessions Court/Fast Track Court No.IV, Bhavani by reversing the judgment dated 08.07.2010 made in S.T.C.No.5230 of 2008 on the file of the Judicial Magistrate, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.A.Thiyagarajan
T.Balaji

J U D G M E N T

This Criminal Appeal arises against the Judgment of Court below convicting the respondent for offence u/s.138 of the Negotiable Instruments Act and sentencing him to one year S.I. and to pay a compensation of Rs.2,00,000/- to the respondent, within a period of three months from the date of receipt of a copy of the order. Against which, the respondent has preferred appeal in C.A.No.104 of 2010 before the Additional District Court, Fast Track Court No.IV, Bhavani, Erode District, in which the conviction and sentence was hereby set aside. Aggrieved over the same, the present revision has been preferred by the appellant/accused.

2. Heard the learned counsel for the appellant as well as learned counsel for the respondent.

3. The appellant as the complainant preferred a complaint against the respondent/accused stating that the respondent had borrowed a sum of Rs.2,00,000/- on 03.05.2008 for his personal expenses agreeing to repay the same within two months. When the appellant demanded the amount, the accused issued a cheque dated

03.07.2008. When the appellant presented the cheque for encashment, the same has been returned on 04.07.2008 with an endorsement "Funds Insufficient". Therefore, the appellant/complainant had filed a private complaint against the respondent/accused under Sections 138 and 142 of Negotiable Instruments Act.

4. In an identical case, this Court in the case of M.Nagarajan vs. T.Duraipandian in Crl.A.No.187 of 2017 dated 18.08.2017, held as follows:

4. Aggrieved by the order of conviction and sentence, the respondent has preferred an appeal in C.A.No.105 of 2010, before the Additional Sessions Judge, Fast Track Court, Bhavani. The learned lower Appellate Judge allowed the appeal and set aside the judgment of conviction and sentence. Aggrieved by the judgment of the lower Appellate Court, the complainant has preferred the present appeal before this Court.

5. The learned counsel appearing for the appellant would submit that the lower appellate Court has simply reproduced the arguments advanced by the parties and it has not considered the materials and recorded a finding and that therefore, it is a fit case for remand to the appellate court.

6. The learned counsel appearing for the respondent advanced his arguments in support of the judgement passed by the lower appellate Court. According to him, the appellate court was justified in setting aside the judgment of the Trial Court.

7. I have carefully perused the judgment of the trial court and the lower Appellate Court. The Trial Court after considering the evidence both oral and documentary, has come to the conclusion that the complainant has proved his case beyond reasonable doubt for the offence under section 138 of the Act. A careful reading of the judgment passed by the lower appellate court would reveal that, it has not dealt with the case properly, as an appellate court. It simply narrated the arguments advanced by the counsel for the respondent. It did not consider or discuss the evidences available on record. The learned Sessions Judge was required to analyse

the evidences on record and after applying his mind, decide the appeal. As the lower appellate court failed to consider the materials on record, the submissions of the learned counsel for the appellant that the judgment of the lower appellate court, caused great prejudice to the appellant, has to be accepted. As the Appellate Court failed to appreciate the entire evidence and record its findings as regards guilt or otherwise of the accused, I am of the considered view that the impugned judgement of the lower appellate court cannot be sustained and it is liable to be set aside.

8. In the result, the Criminal Appeal is allowed and the Judgment passed by the learned Additional District and Sessions Judge, Fast Track Court No.4 Bavani, Erode District is set aside and the matter is remitted to the said Sessions Court for fresh disposal, in accordance with law. The parties are directed to appear before the said court on 11.09.2017.

5. Considering the submissions made by both sides and following the above Judgment passed in CrI.A.No.187 of 2017 dated 18.08.2017, this Criminal Appeal is allowed and the following order is passed:

i) The Judgment passed in C.A.No.104 of 2010 before the learned Additional District and Sessions Judge, Fast Track Court No.IV, Bhavani, Erode District, is hereby set aside and the matter is remanded back to the Appellate Court.

ii) The Appellate Court is directed to give an opportunity to the appellant as well as the respondent. After such opportunity, the Appellate Court is also directed to pass fresh orders on merits and in accordance with law, preferably, within a period of three months from the date of receipt of a copy of this order.

iii) The parties are directed to appear before the said Court on 05.02.2018.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Additional District and Sessions Court
Fast Track Court No.IV, Bhavani.

2.The Judicial Magistrate, Bhavani.

3. The Public Prosecutor, High Court, Chennai.

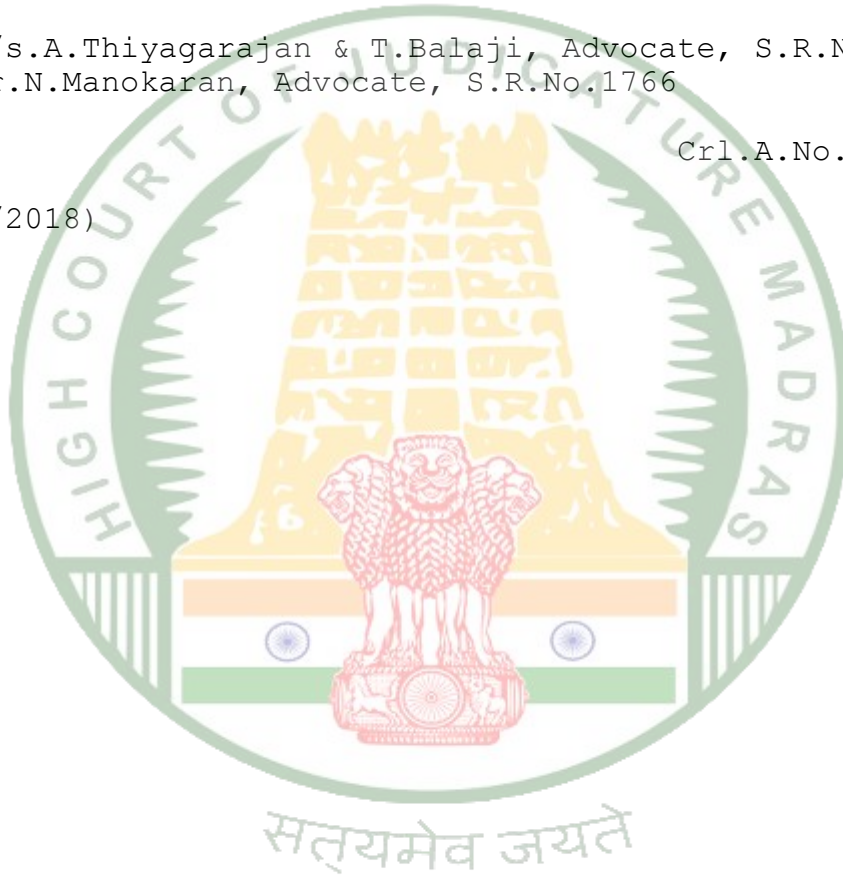
4. The Record Keeper, Criminal Section,
High Court, Chennai.

+1cc to M/s.A.Thiyagarajan & T.Balaji, Advocate, S.R.No.1556

+1cc to Mr.N.Manokaran, Advocate, S.R.No.1766

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KAN(CO)
RRK(17/01/2018)



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