

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No. 323 of 2011

1.M.Madeswari
2.M.Arunkumar
3.M.Gowthami

.. Petitioners

Vs.

Venkatachalam

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to set aside the order dated 19.11.2002 made in C.A.No.68/2002 on the file of the Additional District Judge (Fast Track Court), Namakkal partly allowed the judgment dated 11.12.2000 made in C.C. No. 328 of 1999 on the file of the Judicial Magistrate No.I, Namakkal.

For Petitioner : Mr.T.Dhanyakumar

For Respondent : No Appearance

O R D E R

This revision is preferred by the legal heirs of the complaint against the two concurrent judgments of the Courts below holding the petitioner guilty for offence under Section 138 of the Negotiable Instruments Act.

2. Initially, the husband of the first petitioner as well was father of the 2nd & 3rd petitioners filed a private complaint before the Judicial Magistrate -I, Namakkal against this respondent by way of private complaint for the offence punishable under Section 138 of N.I. Act. The learned Judicial Magistrate No.I, Namakkal, after elaborate enquiry concluded the said C.C. No. 328 of 2009 and finally pronounced the judgment, in which he convicted the respondent herein for the offence under Section 138 of N.I Act and awarded one year simple imprisonment, against which, the respondent Venkatachalam filed Crl.Appl.No. 68 of 2002 before the Additional District Judge (Fast Track Court), Namakkal. At the end of the Appeal, the learned Additional District Judge (Fast Track Court), Namakkal had pronounced a judgment, in which he modified the sentence awarded by the learned Judicial Magistrate No.I, Namakkal and imposed Rs.20,000/- as fine instead of one year simple imprisonment. Pending Criminal Appeal, the complainant Muthusamy was died.

3. Now the petitioners being legal heirs of late Muthusamy filed this revision, praying to set aside the judgment passed by the learned Additional District Judge (Fast Track Court), Namakkal in Crl.Appl. No. 68 of 2002 dated 19.11.2002.

4. The learned counsel for the petitioners would submit that initially the case has been filed against the respondent herein by the said late Muthusamy. Further, in the complaint lodged by the late Muthusamy, he made allegations against the respondent that the respondent had committed offence under Section 138 of N.I Act. In the said circumstances, the case was ended in favour of the late. Muthusamy and thereafter the respondent in the said complaint had filed a Criminal Appeal against the complainant Muthusamy. Thereby in order to substantiate the case of late Muthusamy, he is a necessary party in the Criminal Appeal, but without adding said Muthusamy, the respondent in this revision petition had filed the appeal before the Appellate Court/Additional District Judge (Fast Track Court), Namakkal. Further during pendency of the said Appeal, the said Muthusamy was died, thereby it is necessary to add the legal heirs of the late Muthusamy for deciding the said appeal. But in the appeal filed by the respondent, the said crucial aspect has not been considered by the learned judge, who disposed of the appeal, modifying the sentence as against the rights of the petitioner to collect the cheque amount, since the case has been filed under the provisions of Negotiable Instruments Act.

5. On the other hand, the learned counsel for the appellant/respondent herein in the said Appeal had made submissions in the said appeal that, since the case has already been disposed of by the Magistrate Court, adding Public Prosecutor alone as respondent is sufficient for disposing the Criminal Appeal.

6. Considering the rival submissions made by the learned counsel appearing for the petitioner, it is an admitted fact that the criminal appeal filed by the respondent has been disposed of by the Additional District Judge (Fast Track Court), Namakkal without hearing late. Muthusamy, who is the complainant. Being the complainant, the said person alone is aggrieved person and being that so, he can only present the case in what way the alleged offence was committed by the respondent, for which the complainant must be added as respondent in the Criminal Appeal, but this aspect has not been followed by the Additional District Judge (Fast Track Court), Namakkal, which is nothing but illegal. Thereby the judgment passed by the 1st Appellate Court is set aside.

7. In the light of the above discussions, this Criminal Revision is disposed of with the directions to the Registry to remit back the case records to the Additional District Judge (Fast Track Court), Namakkal for disposing of the same after adding the petitioners herein who are the legal heirs of late. Muthusamy as respondents in the Criminal Appeal No.68 of 2002 in accordance with law. The learned Additional District Judge (Fast Track Court), Namakkal is directed to dispose of the said criminal appeal within a period of three months from the date of receipt of a copy of this Order.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

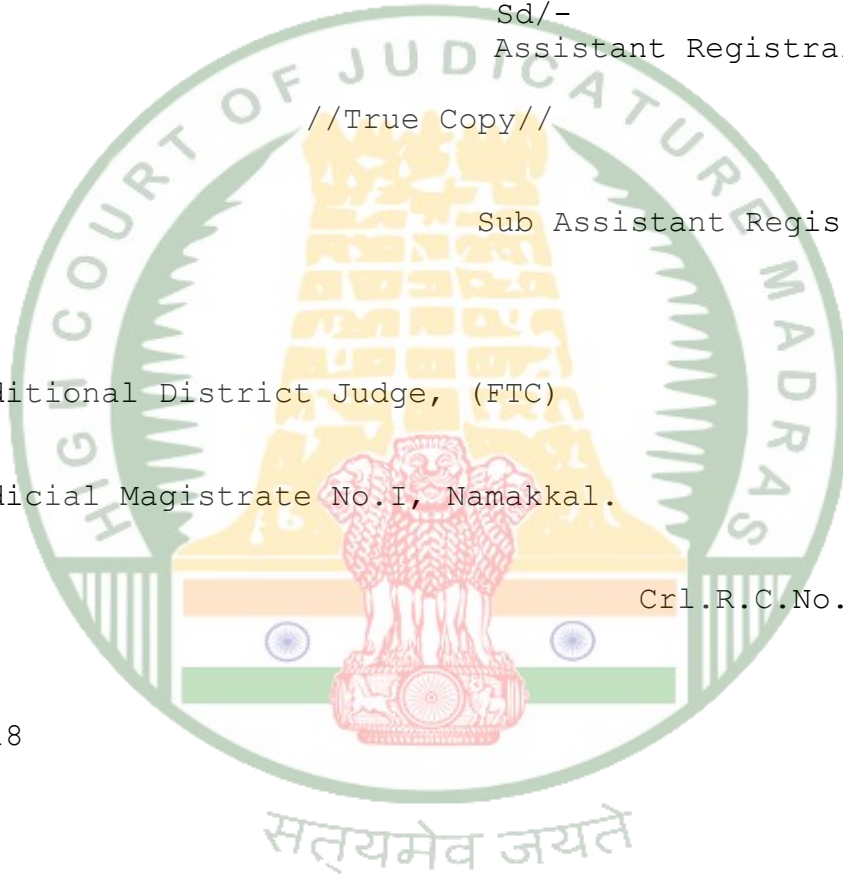
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TO

1. The Additional District Judge, (FTC)
Namakkal.
2. The Judicial Magistrate No.I, Namakkal.

Cr1.R.C.No.323 of 2011

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