

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C.No.1032 of 2009

T.Sampath Kumar

... Petitioner

Vs

M/s.Sri Vari Enterprises,
Rep. by its Partner
Mr.T.Badrinath,
No.189/3, N.S.C. Bose Road,
Chennai.

... Respondent

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. to set aside the order dated 23.10.2009 made in Criminal Appeal No.48 of 2009 on the file of the Additional District and Sessions Judge, III FTC, Chennai confirming in the judgment dated 27.01.2009 made in C.C.No.13578 of 2006 by the VIII Metropolitan Magistrate, George Town, Chennai in so for not acquitting the petitioner and allow this Criminal Revision Case.

For Petitioner : No appearance

For Respondent : No appearance

O R D E R

This revision has been filed to set aside the order dated 23.10.2009 made in Criminal Appeal No.48 of 2009 on the file of the Additional District and Sessions Judge, III FTC, Chennai confirming in the judgment dated 27.01.2009 made in C.C.No.13578 of 2006 by the VIII Metropolitan Magistrate, George Town, Chennai.

2. This revision is pending from the year 2009. The adjudication reveals that despite several opportunities given to the revision petitioner, they have not come forward to advance any arguments. Though several opportunities given to the revision petitioner, there is no representation for the revision petitioner. Today also there is no representation for the revision petitioner. Hence, this Court is inclined to peruse the materials available on record and dispose of the revision as follows :

3. This revision is challenging the conviction and sentence of three months simple imprisonment for the offence under section 138 of the Negotiable Instruments Act and to pay a compensation of a sum of Rs.7,40,000/-.

4. The case of the respondent is that the revision petitioner has borrowed hand loan on various dates and issued a cheque dated 10.10.200 drawn on Canara Bank, Mylapore Branch. When the cheque was presented for encashment, the same was dishonoured for insufficient funds and the respondent has sent a demand notice. Thereafter, filed the complaint. The learned trial Court and the first appellate Court considering the very admission of D.W.1 that he owed a sum of Rs.4,50,000/- to the respondent and the cheque has been issued towards the consideration, has held that the accused committed offence under section 138 of the Negotiable Instruments Act.

5. On a perusal of the judgment of the trial Court and the first appellate Court, particularly in the evidence of D.W.1, namely, the revision petitioner, he has categorically admitted as to the issuance of the cheque towards the loan transaction. When a negotiable instrument has been issued for valid consideration and the same was dishonoured for insufficient funds and appropriate notice was sent in time by the payee, the statutory presumption under section 118 and 139 of the Negotiable Instruments Act will come into play in favour of the payee.

6. The accused has not filed any materials to dislodge the legal presumption attached to the cheque in question. However, there is some dispute with regard to the value of the consideration and the trial Court and the first appellate Court has come to the conclusion that only Rs.7,40,000/- is due from the accused. Therefore, I am of the view that merely because there is a difference in consideration established on record, that itself cannot be a ground to non suit the revision petitioner. When the ingredients of the offence under section 138 is clearly made out and proved, in the absence of any materials to rebut the legal presumption, the accused has to face the consequences. Accordingly, this Court does not find any infirmity or illegality in the finding of the Courts below. Hence, this revision is liable to be dismissed.

7. Accordingly, this revision is dismissed and the conviction and sentence of the Courts below is confirmed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

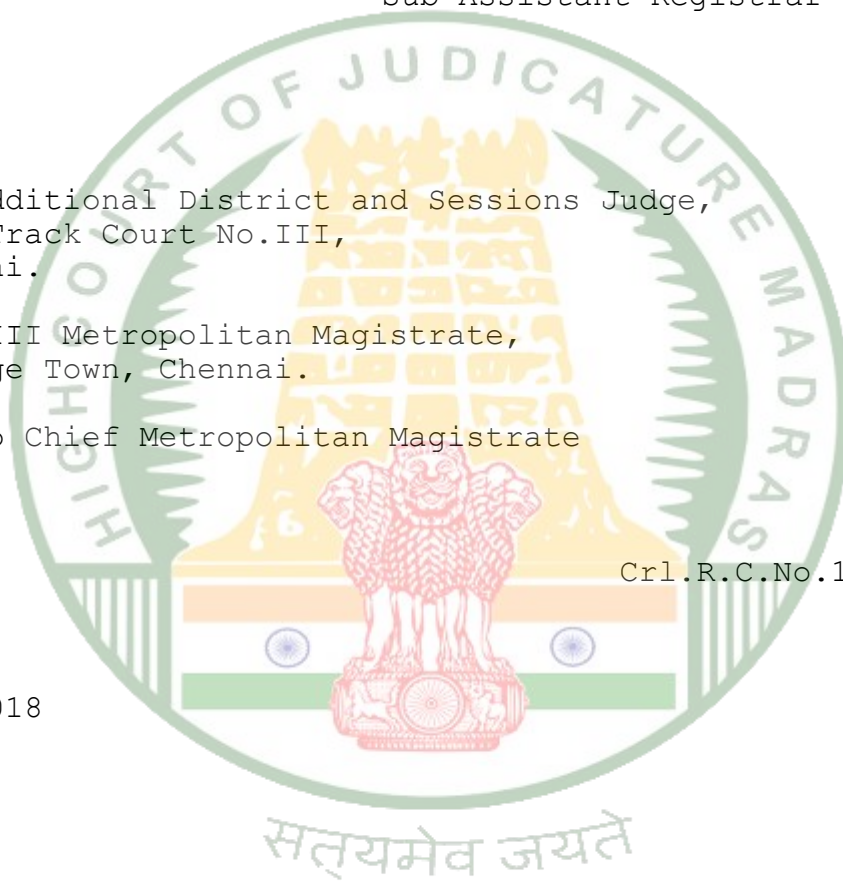
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To

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Chennai.
2. The VIII Metropolitan Magistrate,
George Town, Chennai.
3. Do-Thro Chief Metropolitan Magistrate
Chennai

Cr1.R.C.No.1032 of 2009

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