

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1273 of 2011
& M.P.Nos.1 & 2 of 2011

Sridharan,
S/o.Srinivasa Iyer,
Working at,
TVS Sundaram Fastners Ltd.,
Harida Post, Hosur Taluk,
Krishnagiri District. Petitioner/Accused

/versus/

Chandian,
S/o.Rasu,
Railway Employee Quarters,
Hosur Town,
Krishnagiri District. Respondent/Complainant

Prayer:- Criminal Revision Case is filed under Section 397 read with 401 of Criminal Procedure Code, against to set aside the judgment and order of conviction dated 20.06.2011 by the Additional Sessions Judge, Krishnagiri in C.A.No.38 of 2007 confirming the conviction and sentence of 6 months in S.I and a fine of Rs.5,000/- IDSI for 3 months in C.C.No.18 of 2006 for the offence under Section 139 of N.I Act passed by the learned Judicial Magistrate No.II, Hosur, Krishnagiri.

For Petitioner : Mr.T.Panchatsaram

For Respondent : Ms.P.Vasantha

O R D E R

This Court was very liberal in granting adjournment to the learned Counsel for the revision petitioner since, he represented this Court that the matter is likely to be settled between the parties. But in spite of several adjournments, the learned counsel is not inclined to proceed with the case or to report settlement.

2. Today, the matter was listed under the caption "For Reporting Settlement". When the matter was called, the learned Counsel appearing for the revision petition sought for a pass-

over. This Court granted pass-over to the learned counsel for the appellant. Again when the matter was called at 12.45pm, the learned counsel representing the Revision Petitioner sought for adjournment. This Court cannot afford to waste its time at the whims and fancies of the counsels, who have taken the brief with the provisional oath that they will defend the parties but fail to honor the oath.

3. The Revision Petition arising out of Section 138 of Negotiable Instrument Act. Since the appellant not ready to assist the Court, this Court heard the counsel for the respondent and after perusal of records proceed to pass the following order:-

4. The revision petitioner was prosecuted under Section 138 of Negotiable Instrument Act by Chandran since the cheque (Ex.P.1) issued by the petitioner in favour of Chandran for Rs.2,00,000/- dated 05.12.2005 bounced without fund on its presentation for collection. After issuing the statutory notice (Ex.P.4) dated 09.12.2005, the complaint was filed since the petitioner failed to pay the amount but denied his liability through his reply notice.

5. The trial court after considering the evidences of Ex.P.1 to Ex.P.8, Ex.D.1 and the testimony of PW.1, DW.1 and DW.2 held that the accused/petitioner admits the issuance of cheque. The defence taken by him that it was given to discharge the Chit amount of Rs.40,000/- found unproved. So, sentenced the accused/revision petitioner to undergo 6 months S.I and to pay a fine of Rs.5,000/- in default 3 months S.I.

6. Aggrieved by the judgment of sentence and conviction passed by the trial Court the accused preferred appeal. In C.A.No.38 of 2007 preferred by the petitioner, the Lower Appellate Court dismissed the appeal and upheld the judgment of the trial Court.

7. In this revision petition, it is contented by the accused that the Courts below has failed to appreciate the defence witnesses properly and wrongly presumed against the accused the enforceability of debt.

8. The records of this case does not lend support to the petitioner's case. The Courts below has gone at length to hold why the defence evidence has not discharged the prima facie burden of presumption. The suit filed by the wife of the accused discloses while she was running a chit transaction some of the subscribers were pressuring her to repay. In the said suit (Ex.P.8), the complainant is not a defendant. Further the accused and his wife who were examined as DW.1 and DW.2 admit the execution of cheque and the existence of money transaction.

Both the Courts below have appreciate law and facts correctly. Therefore, this Court finds not merit in this Revision Petition.

9. The learned counsel appearing for the respondent would submit that pursuant to the direction of this Court vide order dated 14.02.2012, the Revision Petitioner has deposited a sum of Rs.2,00,000/- in the credit of C.C.No.18 of 2006 on the file of Judicial Magistrate No.II, Hosur. He submit that if the sentence is modified and order compensation with permission to withdraw Rs.2,00,000/- which is equivalent to the cheque amount, it will meet the ends of justice.

10. This Court on consideration of the above submission made by the respondent counsel and on perusal of records find that after the dismissal of his appeal, the revision petitioner has preferred the present revision. Pending revision he has prayed for suspension of sentence in CrI.M.P.No.1 of 2012 in CrI.R.C.No.1273 of 2011. In that application this Court has directed him to deposit Rs.2,00,000/- in the credit of C.C.No.18/06 account. Accordingly the revision petition has duly deposited the money. In the light of the above fact, the period of imprisonment imposed by the Courts below is modified to as compensation of Rs.2,00,000/- payable to the complainant. The fine of Rs.5,000/- if paid, shall be refunded to the accused/revision petitioner.

11. Accordingly, the Criminal Revision Case is disposed of. The complainant is permitted to withdraw the Rs.2,00,000/- deposited by the accused into the credit of C.C.No.18/06 towards his compensation. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

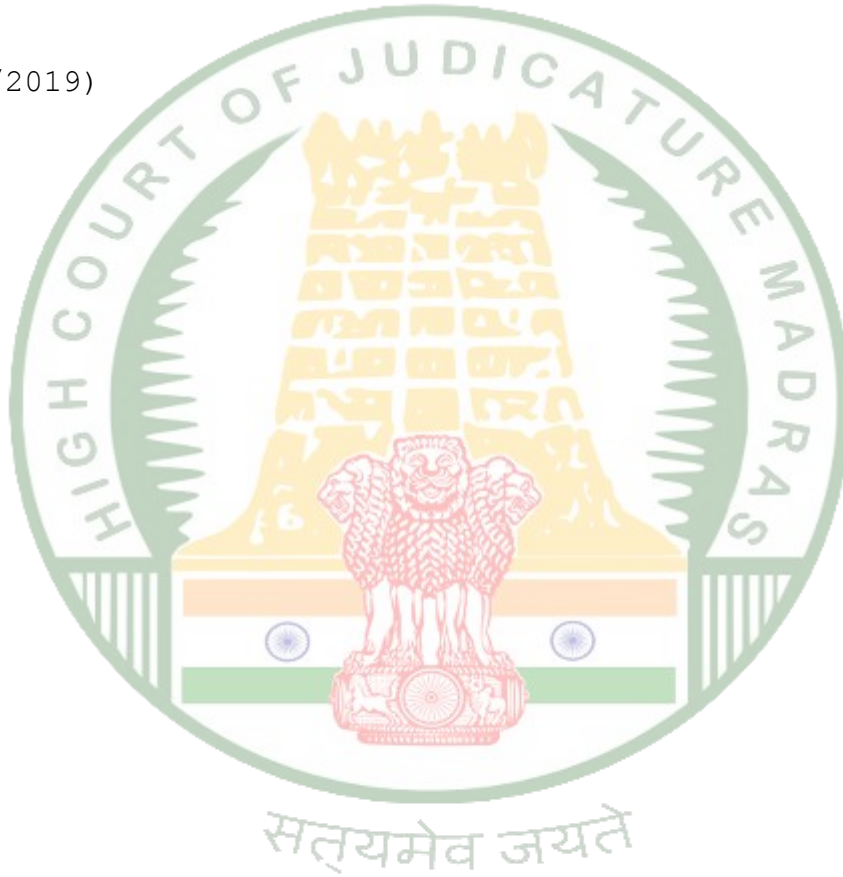
1. The Additional Sessions Judge, Krishnagiri.
2. The Judicial Magistrate No.II, Hosur, Krishnagiri.
3. -do-Through'The Chief Judicial Magistrate, Krishnagiri.

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4. The Judicial Magistrate No.II, Krishnagiri.
 5. The Superintendent, Central Prison, Vellore.
 6. The Public Prosecutor, High Court Madras.
 7. The Section Officer, Criminal Section, High Court, Madras.
- +1cc to Mr.P.Vasanth, Advocate SR.No.14409

Criminal Revision Case No.1273 of 2011

VD(CO)
GMY(19/03/2019)



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