



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1063 of 2012

M.Sundaram

..Petitioner/Appellant/Accused

Vs.

V.P.Periasamy

.. Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 18.06.2007 passed in C.C.No.572 of 2004 on the file of the Judicial Magistrate Court No.I, Salem, confirmed by the judgment and order dated 22.07.2008 passed in C.A.No.99 of 2007 on the file of the Additional District Court (Fast Track Court No.I), Salem.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.N.Manokaran

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 18.06.2007 passed in C.C.No.572 of 2004 on the file of the Judicial Magistrate Court No.I, Salem, confirmed by the judgment and order dated 22.07.2008 passed in C.A.No.99 of 2007 on the file of the Additional District Court (Fast Track Court No.I), Salem.

2. For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant, respectively.

3. It is the case of the complainant that the accused borrowed from him, a sum of Rs.3,25,000/- on 10.05.2003, towards which, the accused gave a cheque (Ex-P1) dated 17.03.2004; when the complainant presented the cheque (Ex-P1), it was dishonoured and returned with an endorsement "Insufficient Funds" on 18.03.2004; therefore, the complainant issued a statutory demand notice (Ex-P3) dated 27.03.2004, which was received by the accused. Since the accused did not comply with the demand, the



complainant initiated a prosecution in C.C.No.572 of 2004 before the Judicial Magistrate No.I, Salem, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

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4. Before the trial Court, the complainant examined himself as PW1 and marked four exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, no witness was examined nor any document marked.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order 18.06.2007 in C.C.No.572 of 2007, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a sum of Rs.3,00,000/- as compensation to the complainant.

7. The appeal in C.A.No.99 of 2007, filed by the accused was dismissed for default by the Additional District Court (Fast Track Court No.I), Salem, on 22.07.2008, challenging which, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

8. Heard Mr.S.Sivakumar, learned counsel for the accused and Mr.N.Manokaran, learned counsel for the complainant.

9. It is seen that the accused had agreed before the Lok Adalat in the trial Court that he would pay a sum of Rs.3,00,000/- as full and final settlement to the complainant, which the complainant has also agreed. Thereafter, the accused did not pay the amount. Even after getting suspension of sentence and bail, before the appellate Court, the accused did not prosecute the appeal.

10. In the opinion of this Court, the appellate Court should have perused the records under Section 386 Cr.P.C. and passed orders on merits, instead of dismissing the appeal for default.

In view of the foregoing discussion, this criminal revision is partly allowed by setting aside the judgment and order dated 22.07.2008 passed in C.A.No.99 of 2007 on the file of the Additional District Court (Fast Track Court No.I), Salem and the matter is remitted to the appellate Court. Both the parties are directed to appear before the appellate Court on 20.12.2019 at 10.30 a.m. The accused shall file a fresh petition for suspension of sentence and bail, before the appellate Court, on such appearance on 20.12.2019. If the accused fails to appear,



the appellate Court shall issue warrant against him and proceed to decide the appeal on merits after hearing the complainant. The Registry is directed return the original records immediately to the Courts below concerned.

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Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.I,
Salem.
2. The Additional District Judge,
(Fast Track Court No.I), Salem.
3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

Copy To:
The Section Officer, Crl. Section,
High Court, Madras-104

+1cc to Mr.S.Sivakumar, Advocate SR.No.97804

+1cc to Mr.N.Manokaran, Advocate SR.No.97818

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RK(CO)
GMY(27/11/2019)