

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.870 of 2018
and
Crl.MP.No.9933 of 2018

Sri.C.Boopalan

.. Petitioner

Vs.

Sri.Rajendran

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records in Crl.M.P.No.913 of 2016 dated 06.03.2018 in Crl.A.No.79 of 2016 on the file of the XVII Additional City Civil Court, Chennai and set aside the same.

For Petitioner : No Appearance

O R D E R

This Criminal Revision has been filed to to call for the records in Crl.M.P.No.913 of 2016 dated 06.03.2018 in Crl.A.No.79 of 2016 on the file of the XVII Additional City Civil Court, Chennai and set aside the same.

2. The matter was posted today at the request of the learned counsel for the petitioner. None appeared on behalf of the revision petitioner.

3. The revision petitioner is the accused and the respondent is the complainant. The respondent/complainant filed the private complaint under Section 200 Cr.P.C against the revision petitioner/accused for the offence under Section 138 of Negotiable Instrument Act before the learned IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai. After hearing the arguments, the learned Magistrate by his order dated 08.03.2016 convicted the accused for the offence under Section

138 of Negotiable Instruments Act and sentenced him to undergo 2 years Simple Imprisonment and directed to pay a sum of Rs.43,60,000/- as compensation to the complainant. There against, the accused preferred the appeal in CrI.A.No.79 of 2016 before the learned Magistrate IV, Fast Track Court, George Town, Chennai, and the same was made over to the XVII Additional City Civil Court, Chennai and the same is pending. During pendency of the appeal, the accused filed the petition in CrI.MP.No.913 of 2016 under Section 391 Cr.P.C to adduce the additional evidence in order to prove his innocence. The learned Additional Sessions Judge, after giving opportunity, dismissed the petition on 06.03.2018, as against the dismissal order, the accused is before this Court by way of this revision.

4. The main contention raised by the revision petitioner is that when the enquiry was conducted before the Magistrate, he had inadvertently omitted to cross-examine with regard to the alleged liability and also put some questions to establish his innocence, he failed to mark some of the documents. When he preferred the appeal before the Sessions Court, he has filed the petition under Section 391 Cr.P.C to receive the additional documents. The learned Sessions Judge failed to give him the opportunity to take the additional evidence and dismissed the petition. If the opportunity was given to him, he could have proved his innocence. On reading of the order passed by the learned Sessions Judge, it is seen that the petitioner has filed the petition only to prolong the case. Before the learned Magistrate, the complainant was recalled and cross-examined by the revision petitioner/accused at length. The learned Sessions Judge after giving an opportunity to the revision petitioner/accused, dismissed the petition filed by the petitioner/accused on the ground that the complainant has proved his case and the revision petitioner/accused has not rebutted the presumption. When the appeal was posted for arguments, at that time the revision petitioner/accused filed the petition under Section 391 Cr.P.C before the Appellate Court. The case of the revision petitioner is that he was not given the opportunity to cross-examine the respondent/complainant. But, he was already given the opportunity to recall the witnesses, PW-1 was examined even in the year 2014 and cross-examined in the year of 2015. The learned Magistrate has given sufficient opportunity and the revision petitioner/accused cross-examined the respondent/complainant. When the revision petitioner/accused was given the opportunity to defend his case and the revision petitioner/accused failed to utilize the opportunity given to him and the reason stated for invoking Section 391 Cr.P.C to take the additional evidence is not acceptable one.

5. This Court finds no perversity or infirmity in the order passed by the Court below. Accordingly, this Criminal Revision

Case is dismissed.
Petition is closed.

Consequently, connected Miscellaneous

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

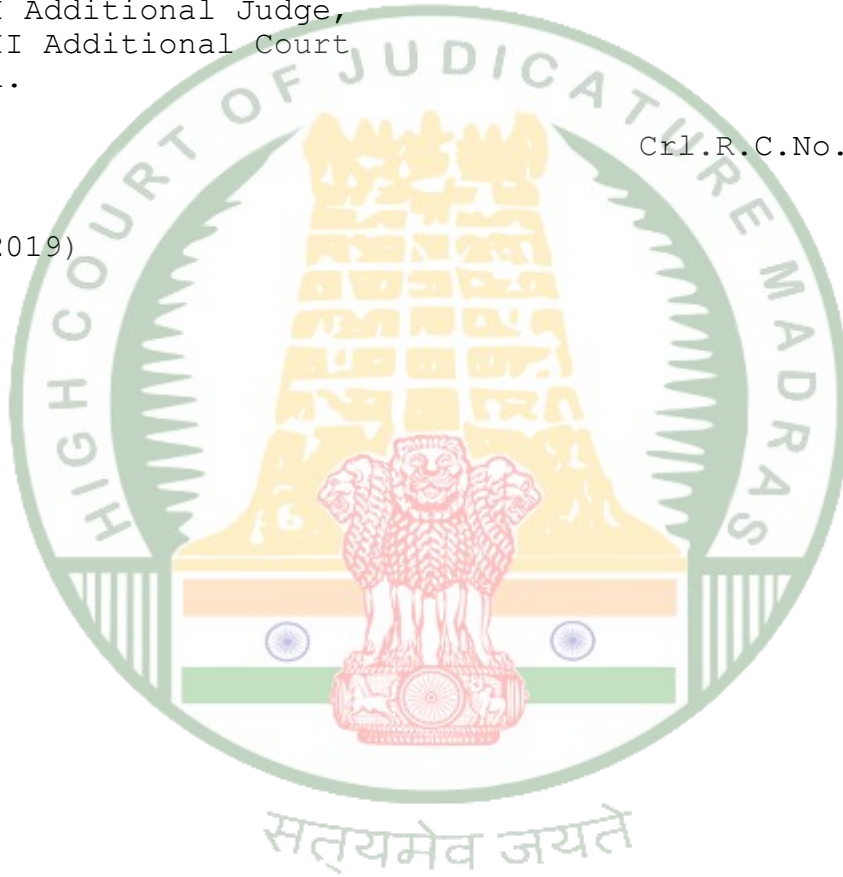
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To

1.The XVII Additional Judge,
FAC XVII Additional Court
Chennai.

Crl.R.C.No.870 of 2018

AD (CO)
CB(10/10/2019)



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