

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.776 of 2019

and

Crl.MP.No.11043 of 2019

M.Siva

S/o.Mani

... Petitioner/Complainant

-Vs-

T.Jeyaprakash

S/o.Thangaraj

.. Respondent/Accused

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 20.06.2019 passed in C.A.No.12 of 2019 on the file of the Principal Sessions Court, Erode, confirming the judgment dated 07.03.2016 passed in S.T.C.No.326 of 2014 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode, by allowing the present revision and convict the respondent in accordance with law.

For Petitioner : Mr.C.Vasudevan

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 20.06.2019 passed by the Principal Sessions Judge, Erode, in C.A.No.12 of 2019, confirmed the judgment dated 07.03.2016 passed by the Judicial Magistrate, Fast Track Court No.1, Erode, in S.T.C.No.326 of 2014.

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

3. It is the case of the complainant that the accused borrowed a sum of Rs.20 Lakhs on 23.03.2014, towards which, he gave a post-dated cheque dated 23.04.2014 for the said amount drawn on ICICI Bank, Perundurai Road, Parry Nagar Branch, Erode. When the complainant presented the cheque, the same was returned with endorsement "Payment Stopped by Drawer". Thereafter, the complainant issued a statutory demand

notice dated 06.05.2014 to the accused. Since the accused did not comply with the demand notice, the complainant initiated a prosecution in STC.No.326 of 2014 before the Judicial Magistrate No.1, Fast Track Court, Erode, under Section 138 of the Negotiable Instruments Act, against the accused, in which, the accused was acquitted on 07.03.2016. Challenging the acquittal, the complainant filed a Criminal Appeal in CrI.A.No.12 of 2019, which has been dismissed by the Principal Sessions Judge, Erode, on 20.06.2019. Challenging the acquittal orders passed by the Courts below, the complainant has filed the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.C.Vasudevan, learned counsel for the petitioner, who submitted that, both the Courts below have failed to properly appreciate the evidence on record and have erroneously acquitted the accused of the charge.

5. This Court gave its anxious consideration to the submission of the learned counsel for the petitioner.

6. In Girish Kumar Suneja Vs. Central Bureau of Investigation, (2017) 14 SCC 809, the Supreme has held that the revisional jurisdiction is only an entitlement and not the right. At this juncture, it is relevant to extract Paragraph No.27 of the above said decision:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings."

7. That apart, under Section 401 Sub-Section 3 Cr.P.C., this Court cannot convert a finding of acquittal into one of conviction. At the most, this Court can only order re-trial. The presumption of innocence is a human

right and in this case, when two Courts have acquitted the accused, the said presumption should not be easily dislodged and re-trial cannot be ordered. That apart, this Court also does not find any perversity or illegality in the orders passed by the Courts below warranting interference in the revisional jurisdiction.

8. In the result, this Criminal Revision case fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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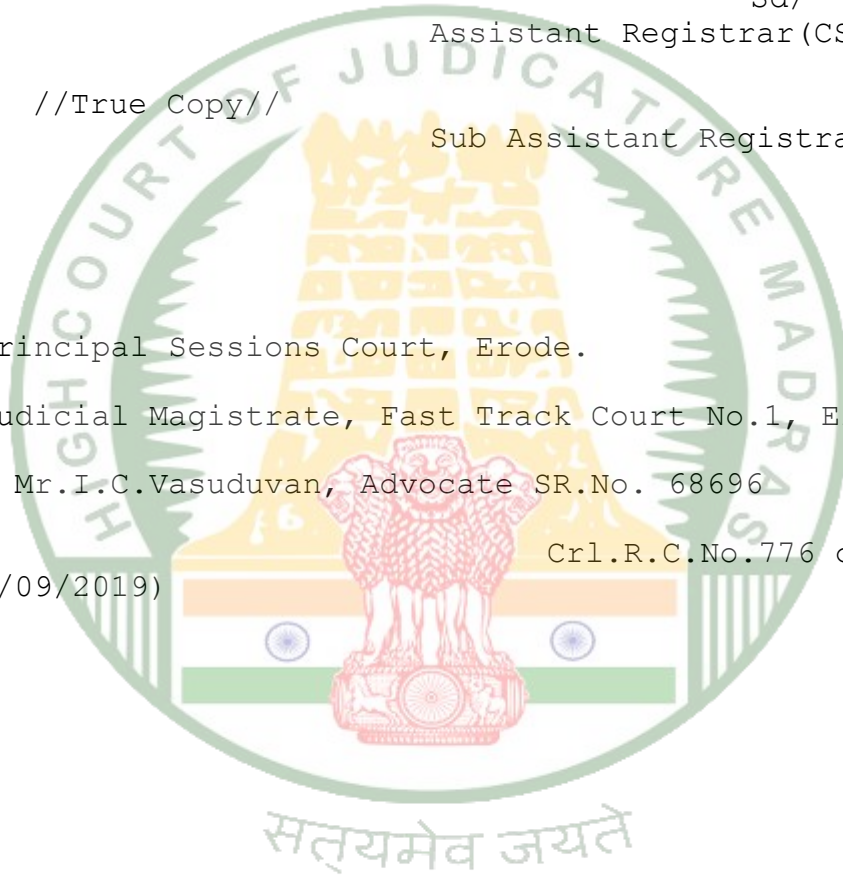
1.The Principal Sessions Court, Erode.

2.The Judicial Magistrate, Fast Track Court No.1, Erode

+1cc to Mr.I.C.Vasuduvan, Advocate SR.No. 68696

CrI.R.C.No.776 of 2019

A.SK(06/09/2019)



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