

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :07.01.2019

Delivered on: 21.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.A.No.590 of 2018

P.Murali

... Appellant

vs.

1.M/s.BMD Hotels and Resorts Pvt.Ltd.,
rep.by its Managing Director,
Mrs.Nirmala Devi

2.Mrs.Nirmala Devi
Managing Director,
M/s.BMD Hotels and Resorts Pvt.Ltd.,
No.12/33, Jambulingam Street, Nungambakkam,
Chennai-600 034

3.Mr.S.Bhaskar
S/o.Sambandam
Director,
M/s.BMD Hotels and Resorts Pvt.Ltd.,
No.12/33, Jambulingam Street,
Nungambakkam,
Chennai-600 034

... Respondents

Criminal Appeal filed under Section 378 of Cr.P.C. against the judgment dated 27.07.2018, passed by the V Additional Sessions Judge, Chennai, in C.A.No.106 of 2016, reversing the order dated 31.03.2016 passed in C.C.No.133 of 2012, by the Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai.

For Appellant : Mr.M.Fazulul Haq
M/s.Juris and Justia

For Respondents : No appearance

JUDGMENT

The present appeal arises out of the judgment, dated 27.07.2018, passed by the Lower appellate Court, in CrI.A.No.106 of 2016, reversing the order dated 31.03.2016 passed by the trial Court, in C.C.No.133 of 2012, convicting the respondents/accused under Section 138 of the Negotiable Instruments Act (the 'N.I.Act' for short).

2.The facts which gave rise to the filing of the appeal, are briefly stated hereunder:

(i)According to the appellant/complainant, he had given Rs.40,00,000/- to the respondents/accused in 2008 for purchase of lands in Koovathur Village, Kancheepuram District. Since the respondents/accused did not purchase any land, as per the assurance, in order to discharge the debt due to the appellant/complainant, five cheques were issued, each representing Rs.2,50,000/-, in all Rs.12,50,000/-, on various dates i.e., on 20.12.2009, 20.01.2010, 20.02.2010, 20.03.2010, 20.04.2010. All the cheques were presented on 24.05.2010 with the complainant's banker. The cheques were returned dishonored with an endorsement "exceeds arrangement", on 25.05.2010. On knowing about the dishonoring of cheques, a legal notice was issued on behalf of the complainant on 14.06.2010, which was received by the accused on 15.06.2010. Since the amounts which were covered under the cheques were not settled within 15 days from the date of receipt of notice issued under the provisions of N.I.Act, a complaint was filed before the trial Court under Section 138 r/w Section 141 of the N.I.Act.

(ii)Thereafter, on the basis of the affidavit filed on behalf of the complainant, the same was taken cognizance of by the trial Court under Section 138 of the N.I.Act, as there was prima facie material in the complaint and thereupon notice was issued to the accused. Since the accused, who appeared in response to the summons, denied the allegations contained in the complaint, trial was conducted by the trial Court.

3.On behalf of the complainant, the complainant examined himself in support of the complaint and on his behalf 13 documents were marked as Exs.P1 to P13. On behalf of the accused no one was examined, but five documents have been marked as Exs.D-1 to D-5.

4.The complainant, in his evidence before the trial Court has clearly deposed that an amount of Rs.40,00,000/- was given to the accused No.1 company and accused Nos.2 & 3, being Managing Director and Director, are responsible for return of

the money in discharge of the debt towards the complainant. The complainant has clearly deposed about the presentation of the cheques and the return of the cheques by the bank with an endorsement 'exceeds arrangement'. Thereafter, a legal notice was issued within the statutory time and since the amounts were not settled within the time stipulated in the statute, a complaint was filed before the trial Court under Section 138 r/w Section 141 of the N.I.Act.

5. According to the complainant the money was given to the accused for purchase of certain lands in Koovathur Village, Kancheepuram District in 2008 and the accused did not procure any lands on the basis of the understanding between the complainant and the accused. In order to partially discharge the liability, the accused had issued five cheques on the dates mentioned above and the cheques were dishonored ultimately. The cheques were marked as Exs.P-1 to P-5 and the return memos were marked as Ex.P-6 to P-10. The legal notice was marked as Ex.P-11 and Exs.P-12 and 13 are the acknowledgments of the receipt of the legal notice, by the accused.

6. The trial Court, after advertng to the evidence both oral and documentary and also after hearing the submissions of the parties, has come to the conclusion that the accused were guilty under Section 138 of the N.I.Act. According to the trial Court, the accused has admitted the issuance of cheques (Exs.P-1 to P-5) as they have not disputed about the execution of the cheques. The accused have also not denied the fact that the cheques have returned dishonored. The defence of the accused was that there were several business transactions between the complainant and the accused and the cheques were given as a security for some transactions, but in fact, there was no legally enforceable debt, attracting the provisions of Section 138 of the N.I.Act. According to the accused there was no written acknowledgment of receipt of Rs.40,00,000/- from the complainant and in their reply notice to the legal notice dated 01.07.2010, the liability has been disowned by the accused and no rejoinder was sent on behalf of the complainant.

7. According to the accused they have not given any details in regard to the time of the issuance of cheques and for what specific transaction Rs.40,00,000/- was given and on what basis the cheques were presented for not honoring the so called commitment made on behalf of the accused in regard to the purchase of land. According to the accused there were sale deeds, which were marked on their behalf as Exs.D-2 and D-5 and also the other documents on their behalf to show that there were several transactions between the appellant and the accused and

some lands were also purchased, in which, the complainant himself was shown as Power of Attorney and being a Power of Attorney, the complainant had sold the same to his wife. According to the accused the complainant himself was a business associate of the first accused and the other accused and therefore, it is not a normal borrowing of money from the complainant and the cheques were issued for discharge of liability.

8.The trial Court disbelieved and discountenanced the case of the respondent/accused for the following reasons:

(a)The contention on behalf of the accused that there were no written receipt of acknowledgment cannot be countenanced both on facts and on law for the simple reason that in the reply notice by the accused dated 01.07.2010, it was clearly admitted about the payment of Rs.40,00,000/- for purchase of land at Koovathur Village, Kancheepuram District. Once it is admitted about the receipt of payment, there need not be any further proof of any written acknowledgment for receipt of the said amount. According to the trial Court there was no requirement for sending a rejoinder and therefore, the absence of any rejoinder on the complainant side does not really affect the case of the complainant.

(b)The execution of the cheques was admitted by the accused and once the execution of the cheques was admitted, there is presumption in favour of the holder of the cheques under Section 139 of the N.I.Act. Once such presumption is taken, it is for the accused to prove the contrary. According to the trial Court the accused have not discharged the burden of proving the contrary, since no oral evidence was let in on their behalf and no worthy materials were marked on their behalf to disprove the case of the complainant. Even though there were several transactions appeared to have taken place between the complainant and the accused, as disclosed from the materials placed on record, the trial Court, however, was of the view that there was no evidence let in on behalf of the accused to show as to what steps have been initiated in order to take back the cheques given by them, if their version is to be accepted that there were several transactions which had taken place between the complainant and the accused. Therefore, the trial Court refused to believe the version of the accused that it was a false case. Moreover, the trial Court has also held that in respect of purchase of certain lands, the complainant has clearly deposed that it was a different transaction and not the transaction which was originally agreed upon for purchase of lands at Koovathur Village, Kancheepuram District. In fact, on behalf of the accused even the statement was not rebutted by letting in any contra evidence. The further contention on behalf of the accused is that the dispute in between the complainant

and the accused was civil in nature and the same cannot be brought within the ambit of Section 138 of the N.I.Act. The trial Court rejected the said submission on the ground that since the accused having accepted the issuance of cheques and having accepted the execution of the same, it is always open to the complainant to choose the forum as he thinks best and the complainant has chosen to prosecute the case under Section 138 of the N.I.Act, which cannot be found fault with on the ground that the dispute was civil in nature. Finally, the trial Court has held that no piece of evidence has been let in on behalf of the accused to prove the contrary when a presumption has been raised in favour of the holder of the cheques, viz., the complainant and in the absence of any evidence to prove the contrary, the complainant has made out a case for violation of Section 138 of the N.I.Act.

9. In the above said circumstances the trial Court has convicted the respondents/accused under Section 138 of the N.I.Act and sentenced them to undergo 2 years simple imprisonment with a fine of Rs.10,000/-. Further, as per Section 357(3) of Cr.P.C., the trial Court has also ordered compensation of Rs.12,50,000/-, being the cheque amount, payable in three months by the accused Nos.2 & 3 and in default of payment of the compensation, they would undergo simple imprisonment for six months. As against the said order passed by the trial Court, an appeal has been filed by the accused before the lower Appellate Court in Crl.A.No.106 of 2016.

10. The lower Appellate Court, while dealing with the appeal, has reversed the order of the trial Court and acquitted the accused. The lower Appellate Court has given several reasons for reversing the order of the trial Court as under:

(a) the trial Court has simply invoked Sections 118 & 139 of N.I. Act to presume the consideration and legally enforceable debt on the Negotiable Instruments issued by the accused. Such a course is not open when the parties are closely associated in business transaction. The complainant was a business associate of the accused, which was an admitted fact.

(b) though the accused persons have not denied the payment of Rs.40,00,000/- by the complainant, yet it was an admitted fact that the accused persons negotiated for purchase of lands, for which, Power of Attorney was obtained in the name of the complainant from the land owners and subsequently the complainant himself has executed sale deeds in favour of his wife. Therefore, it is proved that there were several transactions between the complainant and the accused, who were working closely as business associates.

(c)merely because the cheques were issued based on some oral business arrangement or agreement, it will not give rise to criminal prosecution. Even if the cheques were dishonored, since the dispute arises out of the said transaction, the same is purely civil in nature and it requires detailed probe into the business relationship between the parties. The complainant cannot invoke the penal clause under Section 138 of the N.I.Act. There were several circumstances under which cheques were issued by the people and all these circumstances will not give rise to file a complaint under Section 138 of the N.I.Act. Only in cases where a legally enforceable debt or liability is proved to be in existence, the penal provision under Section 138 of the N.I.Act can be invoked.

(d)no prudent man will pay such a huge amount without acknowledgment or receipt or terms of agreement. The nature of transaction between the complainant and the accused speaks something more exists between the complainant and the accused.

(e)it is not revealed by the complainant as to on which date he gave money and on which date the accused gave cheques. Whether the cheques were issued post dated or after demand made by the complainant are also not spoken by the complainant.

(f)the complainant has also not stated as to whether the land purchase dealing with the third accused is in the individual capacity or in the capacity of the Director of the first accused company.

(g)the explanation given by the accused persons for issuance of the cheques was quite probable, reasonable and acceptable.

(h)the cheque bounce cases cannot be treated as criminal cases in strict sense. This is a quasi civil case, where the preponderance of probabilities plays a vital role. If the accused is able to raise a probable defense, it creates a doubt on the very existence of legally enforceable debt or liability, the prosecution must fail.

With the above said reasoning, the lower Appellate Court has concluded that there was no legally enforceable debt or liability and therefore, the complaint was not maintainable under Section 138 of the N.I.Act.

11.On behalf of both the appellant/complainant and the respondents/accused, before the lower Appellate Court, number of decisions were cited. However, the lower Appellate Court has concluded that in view of the elaborate discussion on the factual matrix of the case, the citations relied on by both the parties need not be gone into in detail. In fact the Appellate

Court has not discussed about any citation at all, while disposing of the appeal. Ultimately, the Appellate Court has held that the presumption under Section 139 of the N.I.Act is rebuttable and the accused persons have rebutted the same successfully. As against the said finding by the lower Appellate Court, the present appeal has been filed.

12.The learned counsel appearing for the appellant would submit that the judgment of the trial Court was well considered and well founded and it dealt with each of the contentions put forth on behalf of both sides. The trial Court has also considered the oral and documentary evidence in proper perspective and came to the definite conclusion about the guilt of the accused for violating Section 138 of the N.I. Act. The Trial Court has firmly held that the accused persons have failed to discharge the burden cast upon them, once there was a presumption in favour of the holder of the cheque was established. It is on record that no evidence was let in on behalf of the accused to prove the contrary except marking five documents, which did not impact much on the complainant. When the order of the trial Court was on the basis of sound material evidence, unfortunately the lower Appellate Court has over turned the said order on the basis of the reasons as aforementioned, which cannot either be countenanced in law or on facts.

13.According to the learned counsel for the appellant/complainant, the lower Appellate Court has completely erred in coming to the conclusion against the complainant that in view of several transactions which had taken place between the complainant and the accused, there cannot be any presumption of existence of any legally enforceable debt or liability. Such conclusion by the lower Appellate Court is contrary to the explicit provision as contained in Section 139 of the N.I.Act. In support of his contention, the learned counsel would rely upon the decision of the Hon'ble Supreme Court of India in Kishan Rao vs. Shankargouda (2018 0 Supreme (SC) 678). He would draw reference to paragraph Nos.10 and 15 to 23 which are extracted hereunder:

"10.The trial court after considering the evidence on record has returned the finding that the cheque was issued by the accused which contained his signatures. Although, the complainant led oral as well as documentary evidence to prove his case, no evidence was led by the accused to rebut the presumption regarding existence of debt or liability of the accused.

15. The High Court has not returned any finding that order of conviction based on evidence on

record suffers from any perversity or based on no material or there is other valid ground for exercise of revisional jurisdiction. There is no valid basis for the High Court to hold that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. The appellant has proved the issuance of cheque which contained signatures of the accused and on presentation of the cheque, the cheque was returned with endorsement "insufficient funds". Bank official was produced as one of the witnesses who proved that the cheque was not returned on the ground that it did not contain signatures of the accused rather it was returned due to insufficient funds. We are of the view that the judgment of High Court is liable to be set aside on this ground alone.

16. Even though judgment of the High Court is liable to be set aside on the ground that High Court exceeded its revisional jurisdiction, to satisfy ourselves with the merits of the case, we proceeded to examine as to whether there was any doubt with regard to the existence of the debt or liability of the accused.

17. Section 139 of the Act, 1881 provides for drawing the presumption in favour of holder. Section 139 is to the following effect:

"139. Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

18. This Court in *Kumar Exports vs. Sharma Carpets*, 2009 (2) SCC 513, had considered the provisions of Negotiable Instruments Act as well Evidence Act. Referring to Section 139, this Court laid down following in paragraphs 14, 15, 18 and 19:

"14. Section 139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

15. Presumptions are devices by use of which the

courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable), and (3) "conclusive presumptions" (irrebuttable). The term "presumption" is used to designate an inference, affirmative or disaffirmative of the existence of a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof".

18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with

evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over."

19. This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. Following was held in paragraph 20:

"20....The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant.

To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist..."

20. In the present case, the trial court as well as the Appellate Court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank of the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed by

the High Court.

21. Another judgment which needs to be looked into is Rangappa vs. Sri Mohan, 2010 (11) SCC 441. A three Judge Bench of this Court had occasion to examine the presumption under Section 139 of the Act, 1881. This Court in the aforesaid case has held that in the event 16 the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. Following was laid down in paragraphs 26 and 27:

"26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat, (2008) 4 SCC 54, may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof."

22. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen having been rejected by the two courts below, we do not see any basis for the High court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW.1, himself has not been explained by the High court.

23. In view of the aforesaid discussion, we are of the view that the High Court committed error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction."

The learned counsel would therefore submit that the order of the trial Court needs to be reinstated and the judgment of the lower Appellate Court is to be interfered with.

14. Despite notice having been served and the receipt of which having been acknowledged, there is no representation on behalf of the respondents. Though the names of the respondents were ordered to be printed and despite the printing of their names today in the cause list, there was no representation on their behalf. Even on an earlier occasion there was no representation on behalf of the respondents.

15. Heard the learned counsel for the appellant and perused the material evidence placed on record.

16. As narrated above, the trial Court has dealt with each and every aspect of the complaint as well as the defence taken on behalf of accused persons and rendered a finding to the effect that there was a legally enforceable debt as against the accused persons, at the instance of the complainant. The conclusion reached by the trial Court appears to be well founded and valid for the simple reason that the trial Court was guided rightly by the principle of presumption in favour of the holder of the cheque, particularly when admittedly the cheques have been executed by the respondents/accused. Once the execution of the cheques was admitted, the burden shifts on the accused

persons to prove the contrary and the accused persons have failed to discharge the burden by not letting in any oral evidence at all and also not letting in any worthy material evidence.

17.The reasons as set forth by the appellate Court cannot stand the test of proper judicial scrutiny, since the appellate Court has unnecessarily presumed certain things without support of any material evidence. The Appellate Court has assumed that no prudent person will pay Rs.40,00,000/- without obtaining any written receipt or documentation. Such conclusion by the lower Appellate Court is erroneous for the reason that in the reply notice of the accused person dated 01.07.2010 it was admitted about the receipt of payment of Rs.40,00,000/- from the complainant. Once the accused persons themselves have admitted the factum of receipt of the amount, the Appellate Court has completely erred in drawing its own conclusion, contrary to the records.

18.Further the Appellate Court was merely guided by the fact that there were several transactions as between the complainant and the accused persons and therefore, it was not a simple transaction and hence Section 138 of N.I.Act was not attracted at all. Such conclusion does not have support of any evidence at all, in the first place. The Appellate Court has traversed beyond the pile of evidence that was made available before the trial Court and needlessly drawn certain presumptions in favour of the accused persons. The Appellate Court has also mistaken itself by concluding that the dispute is purely civil in nature and therefore, the complainant was not entitled to invoke the penal provision of Section 138 of the N.I.Act. The Appellate Court failed to appreciate that it is always open to the complainant to maintain his complaint under Section 138 of the N.I.Act and he can always proceed against the person for recovery of the amount in civil proceedings. Because there is a remedy available in civil proceedings, the complainant cannot be shut out from availing remedy under Section 138 of the N.I.Act.

19.Likewise the lower Appellate Court has unnecessarily presumed that there was no legally enforceable debt, in the absence of any rebuttal by the accused persons. This Court is unable to appreciate as to the basis of such conclusion by the Appellate Court when no material is available to come to such a conclusion that the accused persons have rebutted the presumption under Section 118 and under Section 139 of the N.I.Act. The conclusion by the Appellate Court that there was a doubt in regard to the transaction itself and therefore, Section 138 of the N.I.Act is not attracted, cannot also be countenanced on fact for the reason that the receipt of the

payment has been accepted and the issuance of cheques, by affixing their signatures, has also been accepted by the accused. In which event the lower Appellate Court has drawn conclusion on the basis of its own perception and understanding without any supportive evidence at all. The conclusion by the Appellate Court that it is not a simple case of borrowal and therefore, Section 138 of the N.I.Act is not attracted, is also invalid for the reason that in business transactions it is always not one of a simple issuing cheque for any loan. It can always be for discharge of liability which may arise of various business transactions between the parties. Therefore, the Appellate Court has misdirected itself while coming to such conclusion that only in case of simple transaction, Section 138 of the N.I. Act can be attracted. The lower Appellate Court has completely failed to appreciate the scheme of the provisions of the N.I.Act on the aspect of issuing negotiable instruments.

20.The lower Appellate Court has also failed to refer to various decisions cited on behalf of the parties, but proceeded to hold that in view of the conclusion reached on the basis of factual matrix of the case, there was no need to elaborate the decisions. Such conclusion by the lower Appellate Court cannot be held to be valid, while exercising its appellate jurisdiction. When decisions are cited on behalf of the parties it is imperative on the part of the lower Appellate Court to apply the ratio laid down in those decisions to the factual matrix of the case and it cannot completely discard the same because of the fact that the Appellate Court is being satisfied about the factual matrix of the case. The conclusion, to say the least, by the lower Appellate Court, on this aspect cannot be countenanced in law. Even otherwise the other reasons as weighed with the Appellate Court cannot be acceptable legal basis for over turning the verdict of the trial Court.

21.In the opinion of this Court the trial Court has given a detailed order dealing with every aspect of the complaint as well as the defence put forth on behalf of the accused and unless such findings by the trial Court, on the basis of oral and documentary evidence, is found to be perverse and legally unacceptable, it is not for the lower Appellate Court to reverse the same. In this case the lower Appellate Court has completely failed to give any contra finding, except drawing its own presumptions, unrelated to the materials which are placed on record before the lower Appellate Court. On the whole, the judgment of the lower Appellate Court cannot stand the test of judicial scrutiny of this Court and the same is therefore, liable to be set aside.

For the above said reasons the criminal appeal is allowed. The judgment passed by the lower Appellate Court is set

aside. The conviction and sentence passed in Calendar Case No.133 of 2012, by the Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai, are confirmed. The trial court is directed to take appropriate steps so as to secure the accused persons in order to serve the sentence.

Sd/-
Assistant Registrar(CIII)

//True copy//

Sub Assistant Registrar

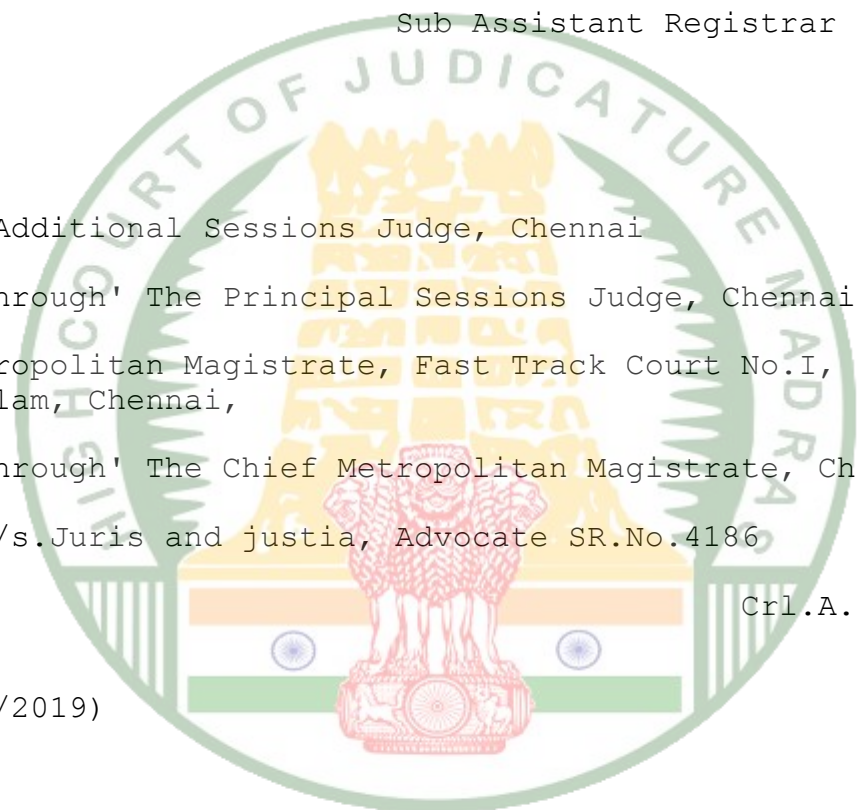
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To

- 1.The V Additional Sessions Judge, Chennai
 2. -do- Through' The Principal Sessions Judge, Chennai.
 - 3.The Metropolitan Magistrate, Fast Track Court No.I,
Allikulam, Chennai,
 4. -do- Through' The Chief Metropolitan Magistrate, Chennai.
- +2cc to M/s.Juris and justia, Advocate SR.No.4186

CrL.A.590 of 2018

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