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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Monday, the Twenty Third day of March Two Thousand Twenty

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD)No.SR6723 OF 2020

in CRL RC(MD)No.855 OF 2008

Manavazhan ... Petitioner/Respondent

- Vs. -

1.Gurusamy ... Respondent/Petitioner

2.State Represented by
Inspector of Police
SIPCOT Police Statio
Thoothukudi

3.The Superintendent of Police
O/oThoothukudi District Crime Branch
Thoothukudi

... Respondents/Respondents

Prayer in CRL MP(MD)SR.No.6723 of 2020
This Petition filed under section 482 of Cr.P.C.to recall the order in Crl.R.C.No.855 of 2008 dated 31.10.2018 passed by this Court and pass such further or other orders.

Prayer in CRL RC(MD)No. 855 of 2008 :
Criminal Revision has been filed under section 397(1) and 401 of Criminal Procedure Code against the order passed in STC.No.1822 of 2007 dated 21.08.2008 by the Judicial Magistrate Aruppukottai.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mrs.T.Seeni Syed Amma, Advocate for the Petitioner, this Court made the following order:

This Criminal Miscellaneous Petition is filed to recall the order passed by this court in Crl.RC(MD)No.855 of 2008, dated 31.10.2018.

2. The learned counsel appearing for the petitioner submitted as per section 401(3) Cr.P.C, the High Court has no power to convert the acquittal into conviction and hence, the petitioner filed the petition to recall the order. For that, the learned counsel submitted a ruling reported in **(2013)11 SCC 668 (Kumar Vs. Karnataka Industrial Corporation Bank Ltd., and another).**

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3. In this case, the complainant filed a petition under section 138 of the Negotiable Instruments Act. The trial court acquitted the accused. But the High Court found the accused guilty. On the side of the accused, it is stated that the petition is maintainable as per section 482 of the Criminal Procedure Code. The complainant filed the complaint under section 138 of the Negotiable Instruments Act. The trial court acquitted the accused. But the High Court found the accused guilty and sentenced him to undergo simple imprisonment for 3 months and imposed fine also.

4. On careful perusal of the records, it reveals that the accused admitted his signature found in the disputed cheque. But the trial court failed to take into consideration the above fact. As per section 397 r/w 401 of the Criminal Procedure Code, when there is any error in the judgment, it can be set aside. The petitioner/accused stated that this petition is maintainable as per section 482 of the Criminal Procedure Code. The petitioner/accused stated in his petition that he is ready to settle the amount. But at the time of argument, the petitioner/accused has not filed any memo to that effect. Only after perusal of the records, this court came to the conclusion that the judgment passed by the trial court is not correct. Hence, it is held that there is error found in the trial court judgment and accordingly, this court has set aside the judgment of the trial court. Now the remedy open to the petitioner/accused is to prefer appeal as against the judgment passed by this court. Hence, it is held that the petition to recall the order passed by this court is not maintainable.

5. In the result, this criminal miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TO

1. The Judicial Magistrate, Aruppukkotai,
Viruthunagar District.

2. Inspector of Police
SIPCOT Police Station,Thoothukudi
3.The Superintendent of Police
O/oThoothukudi District Crime Branch, Thoothukudi

4. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

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ORDER DATED : 23/03/2020

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ORDER
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CRL MP(MD).SR6723 OF 2020
in CRL RC(MD). 855 OF 2008

Giving direction and etc.
as stated within.

KM(CO)
TR(08.06.2020) 3P 5C

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