

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.No.538 of 2016

Prakash @ Pragadeeswaran

... Petitioner

Vs.

M.Parvin

... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. against the judgment dated 20.01.2016 of the learned I Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.167 of 2010, confirming the conviction and sentence vide judgment passed by the learned Judicial Magistrate No.II, Vellore, Vellore District in S.T.C.No.287 of 2006 dated 03.08.2010.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.M.Sathishkumar

ORDER

The petitioner herein is the accused and the respondent herein is the complainant. On a private complaint given by the complainant against the petitioner under Section 138 of the Negotiable Instruments Act, the same was taken on file as S.T.C.No.287 of 2006 on the file of the Judicial Magistrate No.II, Vellore, and the accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly he was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 15 days. Challenging the same, the petitioner has preferred an appeal before the I Additional District and Sessions Judge, Vellore, Vellore District, which ended in dismissal, against which the present Criminal Revision Case has been filed.

2.The learned counsel for the petitioner has submitted that the Courts below failed to appreciate that the petitioner

Negotiable Instruments Act and that the complainant had failed to establish a legally enforceable debt in respect of the amount covered by the cheque in question to the tune of Rs.70,000/-. It is also submitted that the Courts below have failed to see the mandatory violation of Section 138(c) of the Act and have erroneously come to the conclusion that the cause of action arose only from 16.03.2004 against law.

3.The learned counsel for the respondent has submitted that the Trial Court has considered the materials and evidence in proper perspective and has passed the impugned order and the same has been correctly confirmed by the Lower Appellate Court and hence the judgments of the Courts below do not require any interference in the hands of this Court.

4.Heard the learned counsel on either side and perused the papers.

5.After a threadbare analysis of the materials and evidence available on record, the Trial Court has observed that even if the original pro-note and the pro-note witness were not examined, it will not shift the burden of the accused to rebut the presumption in favour of the complainant. It is also observed that the present complaint has been filed on 15.04.2004, being the last day of limitation and hence the same was not barred by limitation. Thus, the contentions raised on the side of the complainant have been properly proved by the complainant beyond reasonable doubt.

6.The Trial Court has considered the materials and evidence in a proper perspective and has rendered the above factual findings. The Lower Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the Trial Court on merits. This Court is not inclined to interfere with the said factual concurrent findings rendered by the Courts below.

7.In the result, the Criminal Revision Case is dismissed being devoid of merits. The Trial Court is directed to secure the accused and commit him in prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the Trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to her legal heirs, as the case may be. It is always open to the parties to file an application before the Trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence even after the accused is taken into custody. In

the event of the matter being compounded under Section 147, ibid, before the Trial Court, the Magistrate shall send a report to the Assistant Registrar (CrI.Side) of this Court, who shall make it form part of the records in CrI.R.C.No.538 of 2016. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

KM

To

- 1.The I Additional District and Sessions Judge,
Vellore, Vellore District.
- 2.The Judicial Magistrate No.II, Vellore, Vellore District
- 3.The Public Prosecutor,
Madras High Court.

Copy To

1. The Assistant Registrar (CrI.Side)
High Court, Madras.
2. The Section Officer,
Criminal Section,
High Court, Madras.

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CrI.R.C.No.538 of 2016

KS (CO)

GMV (10/06/2020)

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