

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.No.1530 of 2017

Athiqueulla ... Petitioner

Vs.

N.S.Ramesh ... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment dated 06.11.2017 passed in Crl.A.No.9 of 2017 by the III Additional Sessions Judge, Vellore @ Tirupathur, confirming the judgment dated 09.02.2017 by the Additional District Munsif cum Judicial Magistrate of Ambur, Vellore District, convicting the petitioner for an offence under Section 138 of the Negotiable Instruments Act and sentencing the petitioner to undergo simple imprisonment for 6 months with payment of compensation of Rs.3,00,000/- within two months, in default to undergo simple imprisonment for 3 months and please to pass order to acquit the petitioner.

For Petitioner : Mr.C.V.Kumar

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 C.C.No.153 of 2014 on the file of the Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District 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 simple imprisonment for six months. A sum of Rs.3,00,000/- has also been ordered to be paid by the petitioner to the complainant as compensation, within 2 months, failing which he has to undergo further simple imprisonment for

three months. Challenging the same, the petitioner has preferred an appeal before the III Additional Sessions Judge, Vellore @ Tirupathur, 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 had not committed the offence under Section 138 of the 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.3,00,000/-. It is submitted that the Trial Court failed to note the contradictory versions of the evidences adduced by the witnesses on the side of the respondent. It is specifically submitted that the Courts below have grossly erred in not giving any finding that the cheque in question has arisen out of a subsisting liability enforceable in the eye of law payable by the petitioner to the respondent.

3.This revision has been admitted by this Court as early as on 12.12.2017. It is seen that no steps have been taken by the learned counsel for the petitioner to serve papers to the other side even at this length of time. Since no order prejudicial to the interest of the respondent is going to be passed, this Court is inclined to dispose of this revision.

4.Heard the learned counsel for the petitioner and perused the papers.

5.It was put forth on the side of the petitioner before the Trial Court that the respondent conducted chit business in which the petitioner joined in a chit for Rs.5,00,000/-; that the petitioner had taken a sum of Rs.3,30,000/- on chit auction; that the petitioner had paid a sum of Rs.2,20,000/- as 11 monthly instalments at the rate of Rs.20,000/- per month towards chit; that as security, the respondent obtained four blank cheques from the petitioner and that the respondent used Cheque No.013375 filling up the amount himself and filed the case against the petitioner. Thus, it was put forth on the side of the petitioner that the cheque in question was not given against any loan obtained from the respondent. But, in this regard, even though the petitioner was examined as D.W.1 before the Trial Court, he has not proved that the cheque in question was given to the respondent, as security for the chit transactions. No documents were adduced on the side of the petitioner before the Trial Court to establish that there were chit transactions between him and the respondent. Further, during the cross examination, the petitioner admitted that the cheque in question is his cheque and he issued the same to the respondent. It is also seen that the petitioner had not produced any documents to

prove that the respondent filled up the blank cheque, except his deposition. The petitioner had also not produced any documentary evidence as regards the legal action taken from his side on the complainant and also he had not stated in his evidence as to whether any action had been taken from his side to recover the remaining four cheques which were said to have been given to the complainant.

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 his 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 (Crl.Side) of this Court, who shall make it form part of the records in Crl.R.C.No.1530 of 2017. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

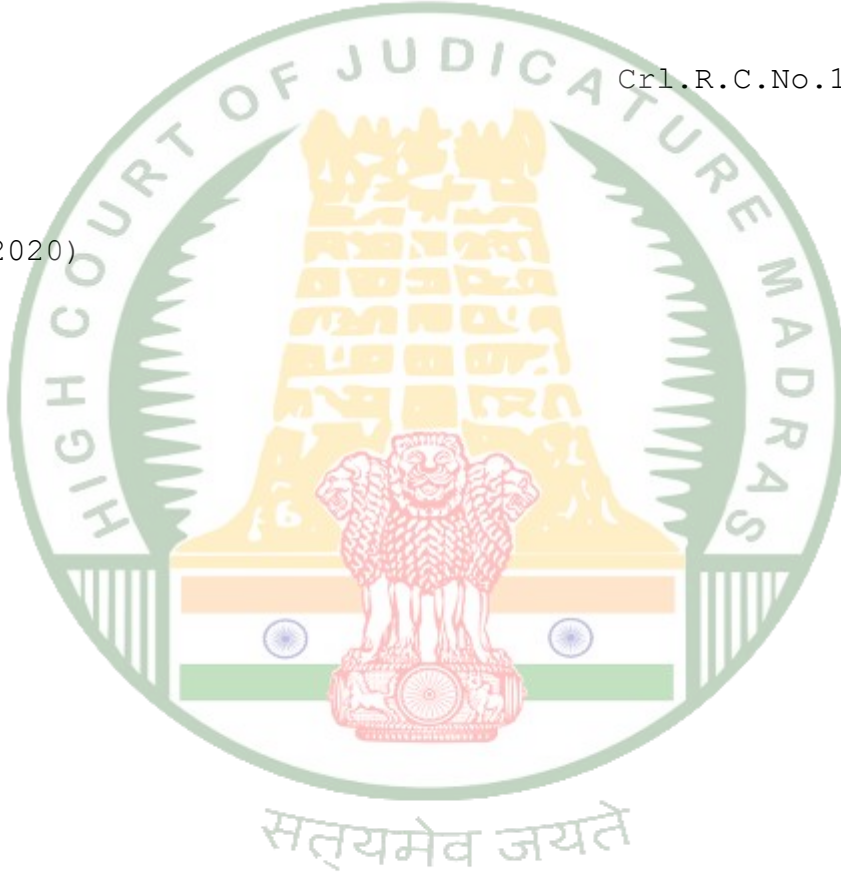
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To

- 1.The Additional District Munsif cum Judicial Magistrate,
Ambur, Vellore District,
- 2.The III Additional Sessions Judge,
Vellore @ Tirupathur,
- 3.The Public Prosecutor,
Madras High Court.

Cr1.R.C.No.1530 of 2017

BP (CO)
GS (21/05/2020)



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