



Crl.R.C(MD)No.488 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**Crl.R.C(MD)No.488 of 2019
and Crl.M.P(MD)No.7085 of 2020**

1.M/s.Karthick Raam Associates,
No.41, Gomathipuram 3rd Street,
Sankarankovil,
Represented by Vijay Shankar.

2.Vijay Shankar,
Managing Partner,
M/s.Karthick Raam Associates,
No.41, Gomathipuram 3rd Street,
Sankarankovil.

... Petitioners/
Appellants/Accused

Vs.

1.Veerammal
2.S.Chitra
3.C.Manikandan
4.C.Ashok Kumar @ Pandi
5.R.Leela
6.C.Paramasarweshwaran

... Respondents/
Respondents/
L.Rs of the Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the entire records pertaining to Crl.A.No.68 of 2013, dated 01.07.2019 on the file of the learned Additional District Judge, Srivilliputhur, confirming the Judgment passed in S.T.C.No.3168 of 2008 on the file of the learned Judicial Magistrate, Rajapalayam and to set aside the same by allowing the revision.



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For Petitioners : Mr.M.Thirunavukarasu
For Respondents : Mr.C.Jeganathan
for Mr.K.Rajeswaran

ORDER

This revision has been filed to set aside the order passed in Crl.A.No.68 of 2013, dated 01.07.2019 on the file of the learned Additional District Judge, Srivilliputhur, confirming the Judgment passed in S.T.C.No.3168 of 2008 on the file of the learned Judicial Magistrate, Rajapalayam.

2.Heard the learned counsel appearing on either side and perused the materials available on record.

3.The first petitioner is a company and the second petitioner is an accused in the complaint lodged by the deceased complainant for the offence punishable under Section 138 of the Negotiable Instruments Act. The respondents 1 to 6 are the legal heirs of the deceased complainant.

4.The crux of the complaint is that the petitioners approached the deceased complainant to construct a compound wall, fine falls castle type (A type) and falls castle (B type).



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Thereafter, both were agreed for the construction and the petitioners agreed to pay the cost of construction amount on four stages. The first stage amount of 25% will be paid on completion of the plinth level, the second stage amount of 35% will be paid on completion of the roof level, the third stage amount will be paid at the rate of 15% on completion of plastering and the last and fourth stage amount of Rs.25% will be paid on completion of the building. All the conditions were agreed upon by both parties and started construction. The total cost was fixed at Rs.84,32,453/- by both parties. After payment of some amount, the petitioners failed to pay the amount as agreed by them. Therefore, the deceased complainant stopped the construction and issued notice thereby calling upon the petitioners to pay a sum of Rs.71,28,783/-. However, the petitioners replied that they are liable to pay only a sum of Rs.42,00,000/- for whatever the construction was put up by the deceased complainant. In order to pay the said amount, the petitioners issued cheque for a sum of Rs.42,00,000/- and the said cheque was presented for collection, however, it was returned 'dishonoured' for the reason that the 'stop payment cheque'. After causing statutory notice, the deceased complainant lodged the complaint.



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5.On the side of the deceased complainant, he himself was examined as P.W.1 and one Thangaraj was examined as P.W.2 and marked Exs.P.1 to P.10 and on the side of the petitioners, they marked Ex.D.1 to Ex.D.4.

6.On perusal of the oral and documentary evidence, the trial Court found that the first petitioner is a company and further the trial Court found the second petitioner guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and also imposed a fine of Rs.10,000/- and in default, he shall undergo three months Simple Imprisonment. Aggrieved by the same, the petitioners preferred an appeal in Crl.A.No.68 of 2013 on the file of the learned Additional District Judge, Srivilliputhur and the same was dismissed confirming the conviction and sentence imposed by the trial Court. Hence, the Revision.

7.The learned counsel appearing for the petitioners would submit that the deceased complainant failed to complete the construction as agreed by them. While pending construction, they paid a sum of Rs.11,00,000/- and while being so, the deceased complainant claimed a sum of Rs.71,28,783/- for the construction



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they put up. After assessing the value of the building, which was constructed by the deceased complainant, the petitioners issued a reply notice and agreed to pay a sum of Rs.42,00,000/-. However, it was dishonoured for the reason that the 'stop payment cheque'. Thereafter, the entire work was entrusted to one Aathi Sivagnam on condition that whatever consideration spent by the deceased complainant to be paid by him. Accordingly, a sum of Rs.10,00,000/- was paid to the deceased complainant, while pending trial, the said document was also marked as Ex.P.3. At the time of suspending the sentence, this Court directed the petitioners to deposit a sum of Rs.10,00,000/- before the trial Court. The said condition was duly complied with. Now, the petitioners are ready and willing to pay the admitted amount as per the reply notice issued by the petitioners. The respondents also agreed to receive the same.

8.Considering the above submissions, the conviction and sentence imposed by the Courts below is hereby set aside on condition that the petitioners shall deposit a sum of Rs.22,00,000/- to the credit of S.T.C.No.3168 of 2008 on the file of the learned Judicial Magistrate, Rajapalayam, on or before 08.05.2023. On such deposit, the respondents are permitted to withdraw the same



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including the amount, which was already deposited by the petitioner while suspending their sentence. It is also made clear that the trial Court is directed to permit the respondents to withdraw the said amount without ordering any notice to the petitioners herein. If the petitioners failed to comply with the said condition, the conviction and sentence imposed by the Courts below are hereby restored without any further reference to this Court and the trial Court is directed to take appropriate steps to secure the petitioners in order to serve out the remaining period of sentence.

9.This Criminal Revision Case is disposed of, with the above direction. Consequently, connected Miscellaneous Petition is closed.

27.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps



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WEB COPY

To

1.The Additional District Court,
Srivilliputhur.

2.The Judicial Magistrate,
Rajapalayam.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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