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Crl.R.C(MD)No.291 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**Crl.R.C(MD)No.291 of 2018
and
Crl.M.P(MD) No.6569 of 2023**

M.Balakrishnan

....Petitioner

Vs.

L.P.Brindha

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records relating to the judgment dated 14.12.2017 made in C.A. No.68 of 2008 on the file of the Additional District and Sessions Court, Theni confirming the judgement dated 28.11.2008 made in STC No.113 of 2006 on the file of the District Munsif, Theni convicting the petitioner for the offences punishable under section 138 of Negotiable Instrument Act and sentenced to undergo rigorous imprisonment for one year and to pay a sum of Rs.5000/- towards fine in default to undergo one month simple imprisonment and set aside the same.

For Petitioner : Mr.M.Jerin Mathew

For Respondent : M/s.APN Law Associates

ORDER

This revision has been filed to set aside the order passed by the learned Additional District and Sessions Judge, Theni in C.A. No.68 of 2008



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dated 28.11.2008 in confirming the conviction and sentence imposed by the learned District Munsif, Theni in STC No.113 of 2006.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the respondent had borrowed house plot from one Athisankaran under three sale deed for the sale price of Rs.5,89,000/-. Later the respondent was informed that the above said Athisankaran did not have any title over the same, therefore criminal cases were registered against him and others. On the complaint enquiry was conducted and thereafter settlement was arrived at between the parties in which the accused undertook to repay the said amount to the respondent herein. Towards settlement the petitioner herein paid a cheque for sum of Rs.5,89,000/- and it was presented for collection and subsequently returned as dishonored, hence the complaint.

4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.6 and on the side of the petitioner, two witnesses were examined as D.W.1 and D.W.2 and Ex.D.1 and D.4 were marked.



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5.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and directed to pay a fine of Rs.5,000/- to the complainant in default to undergo simple imprisonment for a further period of one month. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed confirming the conviction and sentence passed by the trial Court. Aggrieved by the same, the present Revision is filed.

6.The learned counsel appearing for the petitioner would submit that at the time of suspending the sentence this Court had directed the petitioner to deposit a sum of Rs.3,00,000/- to the credit in STC No.113 of 2006 and accordingly the petitioner had deposited the said amount on the file of the learned District Munsif, Theni . He further submitted that the petitioner is ready and willing to pay the remaining amount within the time stipulated by this Court. He would further submit that in the meanwhile the respondent died, therefore the legal heirs may be directed to execute the sale deed in favour of the petitioner.

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



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8. Considering the said submission, the petitioner was directed to deposit the remaining amount of Rs.2,89,000/- on or before 26.06.2023 before the trial Court and on such deposit the legal heirs of the respondents may be permitted to withdraw the same by filing proper application. On receipt of such application the trial Court is directed to pass orders to cancel the sale deed which was executed in favour of the deceased in the manner known to law.

9. Accordingly the Criminal Revision Petition stands partly allowed. It is also made clear that if the petitioner fails to deposit the balance cheque amount on or before **26.06.2023** the sentence imposed by the trial Court is hereby restored and the trial court shall pass appropriate orders to secure the petitioner in order to serve the remaining sentence period. Consequently connected miscellaneous petition is closed.

24.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1. The Additional District and Sessions Court, Theni
2. The District Munsif, Theni



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G.K.ILANTHIRAIYAN, J.

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Order made in
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