

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. NO.1037 OF 2014

& M.P.NOS.1 AND 2 OF 2014

1. Sri Moogambika Saga Factory
rep. by its Partner
P. Viswanathan

2. P.Viswanathan

.. Petitioners/Accused 1 & 2

Versus

1. S.Eswaramoorthy

.. Respondent/ Complainant

2. The Public Prosecutor,
High Court, Madras.

.. Respondent

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, against the judgment and conviction passed by the learned Principal District and Sessions Judge, Erode in C.A.No.37 of 2013 on 21/05/2013 confirming the order dated 08.10.2013 passed by the learned Judicial Magistrate-II, Erode in C.C.No.14 of 2006.

For Petitioners : Mr.N.R.Elango, Senior Counsel
for Mr. D.Selvaraju

For Respondent-1 : Mr.V.Bharathidasan
for Mr. S. Dhanasekaran

ORDER

The petitioners are the accused and the first respondent is the complainant.

2. The revision has been filed by the petitioners/accused against the judgment and conviction passed by the learned Principal District and Sessions Judge, Erode in C.A.No.37 of 2013 on 05.09.2013, confirming the order dated 21.05.2013 passed by the learned Judicial Magistrate-II, Erode in C.C.No.14 of 2006.

3. The case of the complainant is that the first accused is a company and the second accused in his financial transaction for business purpose borrowed a sum of Rs.3,00,000/- on 16.09.2005 from the complainant, To discharge the above said debt, the second accused being the partner of the company issued a cheque dated 17.10.2005 for the said amount. When the said cheque was presented for collection, the same was returned with an endorsement "Account closed". Therefore, a statutory notice was issued to the accused. Since no payment was made even thereafter, the complainant has filed the present complaint for the offences punishable under Section 138 r/w 141 and 142 of the Negotiable Instrument Act and the same was taken cognizance in C.C. No. 14 of 2006 on the file of the learned Judicial Magistrate-II, Erode. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and since the first accused is a company represented by second accused, the first accused is imposed to pay a fine of Rs.5,000/- and sentenced the second accused under Section 255 (2) of Cr.P.C. to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one week and acquitted the third accused. Aggrieved by the same, the accused have filed Crl.A. No.37 of 2013 before the learned Principal District and Sessions Judge, Erode and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, the petitioners have filed the present Criminal Revision Case.

4. After some elaborate arguments learned Senior Counsel appearing for the petitioners/accused would confine his argument only on the question of sentence imposed on the petitioner by the courts below. The learned Senior counsel for the petitioner fairly submitted that the cheque has been misused by the complainant. However, now the petitioners are willing to pay the entire cheque amount and, therefore, the learned Senior Counsel for the petitioners prays for showing leniency against the petitioners.

5. Learned counsel for the respondent also fair enough to say that instead of sending the second accused to prison, the complainant may be benefited with some more compensation.

6. I have perused the materials available on record.

7. The trial court convicted the petitioners/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and imposed a fine of Rs.5,000/- to the first accused company and sentenced the second accused to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one week.

8. However, taking into consideration the submission made by the learned Senior counsel for the petitioners though there is discrepancies and the fact that he has argued only on the question of sentence and also the fact that both the parties are willing to settle the matter, I am of the view that instead of sending the second petitioner to jail, in the interest of justice, he may be directed to pay some amount as compensation. Accordingly, while

confirming the conviction imposed by the Courts below, the sentenced is modified to that of payment of compensation to the tune of Rs.3,00,000/- (Rupees Three Lakhs only). The petitioner is directed to pay the amount of Rs.3,00,000/- to the complainant within a period of four weeks from the date of receipt of a copy of this order as compensation. It is made clear that if the second petitioner fails to pay the said amount/or deposit in Court within the above stipulated period, he shall undergo the period of sentence as imposed by the Courts below and this order will not enure to the benefit of the accused.

With the above direction and modification, this Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Principal District and Sessions Judge, Erode.
2. The Judicial Magistrate-II, Erode.
3. -do - Thro the chief Judicial Megistrate, Erode.
4. The Public Prosecutor, High Court, Madras.

+1cc to Mr. S. Dhanasekaran, Advocate SR 36032

+1cc to Mr. D. Selvaraju, Advocate SR 35893

सत्यमेव जयते

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VP (CO)
RS 10.08.2015