

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.105 of 2015

S.Vellaichamy

.. Petitioner/Accused

Versus

K.Rathinasabapathy

.. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, against the judgment and conviction passed by the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.155 of 2013 on 03.03.2014 confirming the order passed by the learned Judicial Magistrate, F.T.C.-I, Coimbatore in C.C.No.3 of 2011, dated 08.10.2013 convicting the petitioner for one year rigorous imprisonment and to pay fine of Rs.5,000/- and in default to undergo three months simple imprisonment for the offence under Section 138 of N.I.Act.

For Petitioner : Mr.R.K.Sukidharan

For Respondent : Mr.Balakrishnan

ORDER

The petitioner is the accused and the respondent is the complainant.

2. The revision has been filed by the petitioner/accused against the Judgment dated 03.03.2014 passed in Crl. A.No.155 of 2013 on the file of the V Additional District and Sessions Judge, Coimbatore, confirming the Judgment dated 08.10.2013 passed in C.C. No.3 of 2011 on the file of the learned Judicial Magistrate, F.T.C-1, Coimbatore.

3. The case of the complainant is that the accused in his financial transaction with the complainant, borrowed a sum of Rs.50,000/- on 01.08.2008. To discharge the above said debt, the accused issued a cheque for the said amount dated 06.01.2009. When the said cheque was presented for collection, the same was returned with an endorsement "insufficient funds". 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 of the Negotiable Instrument

Act and the same was taken cognizance in C.C. No. 3 of 2011 on the file of the learned Judicial Magistrate, FTC-1, Coimbatore. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced as per Section 255 (2) of Cr.P.C. to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- and in default to undergo Simple imprisonment for another period of three months. Aggrieved by the same, the accused has filed Crl.A. No.155 of 2013 before the learned V Additional District and Sessions Judge, Coimbatore and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the first appellate Court, the petitioner has filed the present Criminal Revision Case.

4. Learned counsel appearing for the petitioner/accused also confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submitted that the cheque has been misused by the complainant. However, now the petitioner is willing to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for showing leniency against the petitioner.

5. Today when the matter is taken up for hearing, learned counsel on both sides submitted that they are willing to settle the matter.

6. I have perused the materials available on record.

7. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of three months.

8. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is 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 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 sentence is modified to that of payment of compensation to the tune of Rs.65,000/- (Rupees Sixty Five Thousand only). The petitioner is directed to pay the amount of Rs.65,000/- to the complainant within a period of three weeks from the date of receipt of a copy of this order as compensation. It is made clear that if the 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.

Sd./
Assistant Registrar,

/True Copy/

Sub-Assistant Registrar

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To

1. The V Additional District and Sessions Judge, Coimbatore.
2. thro - The Principal sessions Judge, Coimbatore.
3. The Judicial Magistrate, F.T.C.-I, Coimbatore.
4. thro - The Chief Judicial Magistrate, Goimbatore.
5. The Inspector of Police, B-10, Police Station, Coimbatore Dt.

+1 cc to Mr.M.N.Balakrishnan, Advocate, sr.33585.

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