

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-04-2015

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1005 of 2008

Arumugam

... Petitioner
(Accused)

Versus

Subramani

... Respondent
(Complainant)

Petition filed under Section 397 and 401 of Criminal Procedure Code against the Judgment dated 11.02.2008 made in Criminal Appeal No. 111 of 2006 on the file of the I Additional Sessions Judge, Salem confirming the judgment dated 21.08.2006 made in C.C. No. 336 of 2002 on the file of Judicial Magistrate No.III, Salem.

For Petitioner : Mr. A. Nagarathinam

For Respondent : Mr. B. Vasudevan

ORDER

The respondent herein has filed a complaint under Section 138 of The Negotiable against the petitioner before the learned Judicial Magistrate No.III, Salem which was taken on file as C.C. No. 336 of 2002. In the complaint, it was contended by the respondent that the petitioner herein borrowed a sum of Rs.59,500/- from him to meet his urgent family expenses. On the date of borrowing the amount, the petitioner executed a promisory note in favour of the respondent agreeing to repay the sum of Rs.59,500/- together with interest at 24% per annum. However, after borrowing the amount, the petitioner did not pay the monthly interest. After persistent demand from the respondent, the petitioner issued a cheque bearing No. 012925 dated 15.02.2002 for a sum of Rs.59,500/- drawn on State Bank of India, Salem Branch. When the cheque was presented by the respondent for collection on 15.02.2002, it was dishonoured by the bank for the reason "insufficient funds". When the petitioner was informed about the return of cheque for insufficient funds, he requested the respondent to re-present the cheque. Accordingly, the cheque was re-presented for payment on 20.02.2002 and 19.03.2002 and they were dishonoured again for the same reason. Therefore, the respondent issued a statutory notice and it was also received by the petitioner

on 27.03.2002. However, the petitioner has neither paid the cheque amount nor issued any reply. Thereafter, the respondent has filed the complaint before the trial court. During the course of trial, the respondent examined himself as PW1 and Exs. P1 to P5 were marked. On the other hand, the respondent examined himself as DW1 but did not mark any document on his side. After trial, the trial court rendered a judgment of conviction against which the petitioner filed an appeal before the Fast Track Court Judge, Salem. The matter was remanded back to the trial court for fresh consideration to enable the accused/petitioner herein recall the prosecution witness. After remand, the learned Judicial Magistrate No.V, Salem convicted the petitioner under Section 138 of The Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year. The petitioner was also directed to pay the sum of Rs.59,500/- being the cheque amount as compensation to the respondent and such amount shall be repaid to the complainant after disposal of appeal by the appellate Court. Such conviction and sentence imposed on the petitioner was confirmed by the appellate Court in the appeal preferred by him. This Criminal revision case is filed against the aforesaid concurrent judgment of conviction rendered by the courts below.

2. Even though elaborate arguments have been advanced on behalf of the petitioner, the learned counsel for the petitioner restricted his argument only with respect to reduction of sentence and not on merits. According to the learned counsel for the petitioner, pending the Criminal Revision Case, this Court suspended the substantive sentence imposed on him on condition the petitioner pays Rs.20,000/- to the credit of C.C. No. 336 of 2002. The petitioner also, with great difficulty, paid the said amount. The cheque amount is Rs.59,500/- out of which the petitioner has paid Rs.20,000/- as on date. The petitioner is 70 years old and he is penniless. The petitioner is presently admitted in hospital for treatment on account of his age old ailment. The learned counsel for the petitioner further submits that if time is granted, the petitioner will be in a position to pay the balance cheque amount of Rs.39,500/-. At any rate, the sentence of one year imposed on the petitioner by the courts below is excessive and it shall be considered to be reduced by this Honourable Court.

3. The learned counsel for the respondent opposed the plea for reduction of sentence. According to the learned counsel for the respondent, both the courts below, on appreciation of the evidence available on record, imposed appropriate punishment to the petitioner and it need not be interfered with by this Court.

4. I heard the counsel for the petitioner. The learned counsel for the petitioner did not argue the case on merits, rather, he only pleaded for reduction of sentence. Having regard to the submission of the counsel for the petitioner and the fact that the petitioner had paid Rs.20,000/- out of the cheque amount of

Rs.59,500/-, I am inclined to modify the sentence imposed on the petitioner. If the petitioner pays the balance amount of Rs.40,000/- within a period of two months from the date of receipt of a copy of the order, the judgment of conviction imposed on him by the courts below will be set aside. On the other hand, if the petitioner fails to pay the amount within the time stipulated, the petitioner shall undergo simple imprisonment for a period of three months as against the sentence of one year imposed by the courts below. If the petitioner fails to pay the balance amount of Rs.40,000/- as mentioned above, the trial court shall take necessary steps to secure the presence of the petitioner to enable him to undergo the modified sentence of three months.

5. With the above modification in sentence, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Sessions Judge
Salem
2. The Judicial Magistrate No.III
Salem
3. Do- Through The Chief Judicial Magistrate,
Salem

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.22465
+1cc to Mr.Nagarathinam, Advocate, S.R.No.22195

Cr1.R.C No.1005 of 2008

MG(CO)
CA(09/06/2015)