

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1007 of 2008  
and  
M.P.No.1 of 2008

N.Ganesh

.. Petitioner

Versus

H.Kishorekumar

.. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 13.03.2008 passed in Crl.Appeal No.87 of 2006 on the file of the learned Additional District and Sessions Judge cum Fast Track Court No.V, Thiruvallur modifying the order dated 22.11.2006 passed by the learned District Munsif cum Judicial Magistrate, Ambattur in C.C.No.95 of 2004.

For Petitioner : Mr.T.R.Ravi

For Respondent : Notice sent, Service awaited

ORDER

The petitioner is the sole accused in C.C. No.95 of 2004 on the file of the learned Judicial Magistrate, Ambattur, Thiruvallur District and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.4,500/-, in default, to undergo simple imprisonment for a period of six months; and out of the fine amount ordered, a sum of Rs.4,000/- was directed to be paid as compensation to the complainant. As against the conviction and sentence imposed, the petitioner filed Crl. Appeal No.87 of 2006 and the first appellate Court by judgment dated 13.03.2008 modified the conviction and sentence passed by the trial Court into one of paying twice the cheque amount alone as compensation to the complainant to the tune of Rs.2,00,000/- within a period of three months, in default, to undergo six months simple imprisonment. Aggrieved by the same, the present Criminal Revision Case is filed.

2. When the matter came up for admission in the year 2008, notice was ordered to the respondent, however, the same was not served. Again, when the matter was listed on 19.11.2012, this Court directed the petitioner to take private notice to the respondent; for effecting private notice no proof was filed. Thereafter, for the past three years, the matter was not listed. Once again, the matter was listed before this Court on 11.06.2015. Even at that point of time, notice sent is still awaited. However, when the matter is taken up

today, the learned counsel for the petitioner is present. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

3. The case of the complainant in brief is as follows:

The petitioner/accused borrowed a sum of Rs.1,00,000/- on 15.06.2003 and in order to discharge the legally enforceable debt, issued a cheque bearing No.374556 dated 15.09.2003 drawn on the Catholic Syrian Bank Ltd., Padi, Chennai-50. However, when it was presented for payment, the same was returned on 16.09.2003, with the endorsement "funds insufficient". Hence, the complaint.

4. Learned counsel for the petitioner restricted his argument only in respect of the compensation amount of Rs.2,00,000/- ordered to be paid by the first appellate Court modifying the conviction and sentence ordered by the trial court. According to the petitioner, he has received only a sum of Rs.20,000/- from the respondent/complainant and he has also repaid the same. He would further submit that the petitioner could not plead mercy in reducing the sentence as the same has been modified by the first appellate court into one of paying the compensation alone. Accordingly, he would pray for reduction in payment of the compensation amount.

5. Heard the learned counsel for the petitioner and perused the records.

6. On a perusal of the judgments passed by the Courts below, it is seen that the trial court had ordered only simple imprisonment for a period of six months and also ordered to pay a compensation of Rs.4,500/- and out of the said sum, directed the petitioner to pay a sum of Rs.4,000/- to the respondent/complainant; the same was modified by the first appellate Court into one of paying double the cheque amount, viz., instead of Rs.1,00,000/- ordered to pay a compensation in a sum of Rs.2,00,000/-. Unable to pay the said amount, the petitioner/accused is before this Court pleading mercy in paying the compensation amount.

7. Taking into consideration the fact that the matter is pending for the past seven years, that the respondent/complainant is not appearing before this Court and that there is a clear discrepancy in regard to the quantum of amount paid, without going into the merits of the matter, this Court thinks it fit to reduce the compensation amount ordered by the first appellate Court to certain extent. Accordingly, the following order is passed:

"The compensation amount ordered to be paid by the first appellate court in a sum of Rs.2,00,000/- is modified and instead the petitioner/accused is directed to deposit a sum of Rs.1,50,000/- [Rupees one lakh fifty thousand only] to the credit of C.C.No.No.95 of 2004 on the file of the learned Judicial Magistrate, Ambattur, Thiruvallur District as compensation within a period of three months from the date of receipt of a copy of this order and on such deposit, being made, the trial court shall permit the respondent/complainant to withdraw the

same. If the amount is not paid as directed above, the compensation ordered by the first appellate court shall stand confirmed."

5. With the above modification, the Criminal Revision Case is partly allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Additional District and Sessions Judge  
cum Fast Track Court No.V, Thiruvallur
2. The District Munsif cum Judicial Magistrate, Ambattur
3. The Public Prosecutor, Madras

Crl RC No.1007 of 2008

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