

The Accused/Appellant viz A.Subramaniam, be and hereby is enlarged on bail as per order of this Court dated 30.04.2015 and made in Crl.Mp.No.2 of 2015 in Crl.Rc.No.414/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN
CRL. RC. No.414 of 2015

& M.P.Nos.1 and 3 of 2015

A.Subramaniam .. Petitioner/Appellant/Accused

Versus

M.S.Loganathan .. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.77 of 2014 on the file of the learned II Additional Sessions Judge, Salem, and set aside the order dated 18.03.2015 modifying the compensation imposed in the judgment in C.C.No.263 of 2011 on the file of the learned Judicial Magistrate No.V, Salem, dated 22.05.2014.

For Petitioner : Mr.R.Nalliyappan
For Respondent : Mr.T.Panchatsaram

ORDER

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

2. The revision has been filed by the petitioner against the Judgment dated 18.03.2015 passed in Crl.A. No. 77 of 2014 on the file of the II Additional Sessions Judge, Salem, modifying the compensation imposed in the judgment dated 22.05.2014 in C.C.No.263 of 2011 on the file of the learned Judicial Magistrate No.V, Salem.

3. The case of the complainant is that the accused in his financial capacity with the complainant, borrowed a sum of Rs.5,00,000/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 12.07.2011 and requested to present the cheque later. When the said cheque was presented for collection on 24.09.2011, the same was returned with an endorsement "insufficient funds". Therefore, a statutory notice was issued to the accused on 04.10.2011. 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 r/w 200 Cr.P.C. and the same was taken cognizance in C.C. No. 263 of 2011 on the file of the learned Judicial Magistrate-V, Salem. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced the accused to undergo six months simple imprisonment and to pay a compensation of Rs.10,00,000/- on the accused and in default to undergo Simple imprisonment for a period of two months. Aggrieved by the same, the accused has filed CrI.A.No.77 of 2014 before the learned II Additional Sessions Judge, Salem and the same was modified by reducing the compensation amount of Rs.10,00,000/- to Rs.5,00,000/- and confirmed in all other respects. Aggrieved by the order passed by the Appellate Court, the petitioner has preferred the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused did not argue the case on merits however, seeks to show some lienency on the accused as the compensation is very high. The learned counsel for the petitioner submits that the accused had no intention to cheat the society. Both the courts below have not properly adduced the evidence and came to the wrong conclusion which is errenous.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioner has not chosen to send any reply notice for the statutory notice issued on 04.10.2011. This aspect has been duly considered by both the courts below. Hence, there is no error of infirmity in the order passed by both the Courts below and prays for dismissal of the revision.

6. After some elaborate arguments, the learned counsel for the petitioner agreed to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. Learned counsel for the respondent has no serious objection for the submission made by the learned counsel for the petitioner.

7. I have perused the materials available on record.

8. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months Simple Imprisonment and to pay a compensation of Rs.10,00,000/- and in default to undergo simple imprisonment for a period of two months.

9. On a careful analysis of the entire records, it is clear that there was a financial transactions between the accused and the complainant. Only to settle the amount, the cheque in question was issued and when the same was presented, it was returned with an endorsement "insufficient funds". There is no dispute with regard to the issuance of cheque in

question. Though it is the submission of the learned counsel for the petitioner that the cheque in question has been issued as security had been misused by the complainant. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

10. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he argued only on the question of sentence and also the fact that the petitioner is willing to settle the amount in question, 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.5,00,000/- (Rupees Five Lakhs only). The petitioner is directed to pay the amount of Rs.5,00,000/- to the complainant, within a period of four months from the date of receipt of a copy of this order. 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.

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

sd/
ASSISTANT REGISTRAR (J)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

smi

To,

1. The II Additional Sessions Judge, Salem.
2. The Chief Judicial Magistrate, Salem
3. The Judicial Magistrate No.V, Salem.
4. The Principal Sessions Judge, Salem.

+1 CC to MR.R.Nalliyappan Advocate. SR.NO. 58469
+1 CC to MR.T.Panchatsaram Advocate. SR.NO. 57944

CRL.RC.No.414 of 2015