

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1128 of 2010

P.Subramaniam

...Petitioner

Versus

R.Uthirakumar

...Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 15.09.2010 passed by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Bhavani in C.A.No.21 of 2009 in confirming the order dated 30.01.2010 passed by the learned II Additional District Munsif, Bhavani in C.C.No.35 of 2008.

For Petitioner : Mr.N.Manokaran

For Respondent : Notice served

ORDER

The petitioner is the sole accused in C.C. No.35 of 2008 on the file of the learned II Additional District Munsif, Bhavani and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month. As against the conviction and sentence imposed, the petitioner filed CrI. Appeal No.21 of 2009 and the first appellate Court by judgment dated 15.09.2010 confirmed the same. Aggrieved by the same, the present Criminal Revision Case is filed.

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

The petitioner/accused borrowed a sum of Rs.75,000/- on 03.02.2008 and in order to discharge the legally enforceable debt, issued a cheque bearing No.081825 dated 13.02.2008 drawn on the Canara Bank, Sakthi Nagar Branch. However, when it was presented for payment, the same was returned on 20.02.2008, with the endorsement "funds insufficient". Hence, the complaint.

3. Learned counsel appearing for the petitioner would submit that the petitioner is a Government servant and according to him, he borrowed totally a sum of Rs.20,000/- only viz., Rs.10,000/- each on

two occasions from the respondent/complainant and the interest for the said amount is Rs.18,000/-. He would further submit that he has already paid a sum of Rs.30,000/- and only a sum of Rs.8,000/- is due and payable to the complainant. He also issued the disputed cheque as a security towards the repayment of the amount borrowed. Since the petitioner has not paid the balance amount of Rs.8,000/- within the time stipulated, the respondent/complainant has filled up the amount and presented the same. On an enquiry made, it was stated by the respondent/complainant that he will not proceed with the matter further and only to threaten the petitioner/accused, he filled up the same. Believing his words, the petitioner also did not send any reply for the statutory notice issued by the respondent/complainant. However, both the Courts below, without taking into consideration the above fact had held that the petitioner/accused had not rebutted the presumption raised in the manner known to law. Accordingly, he would pray for setting aside the judgments of both the courts below as the same cannot be applied in the present case.

4. However, in the alternative, the learned counsel for the petitioner/accused would submit that if this Court comes to a conclusion that the orders passed by the Courts below warrants no interference, then, he pray for reduction of the sentence imposed on the petitioner/accused as six months rigorous imprisonment imposed by the Courts below is on the higher side.

5. Though notice has been served on the respondent/complainant and his name also printed in the cause list, none appeared. 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] after hearing the learned counsel for the petitioner.

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

7. On a careful consideration of the judgments passed by both the Courts below, it is seen that the petitioner is a Government servant and he has admitted the issuance of the cheque to discharge his legally enforceable debt. When there is a clear admission regarding the transaction, receipt of money and issuance of the cheque, the contention put forward now by the petitioner stating that the respondent/complainant has misused or abused the cheque issued, cannot be accepted at this distant point of time. Hence, I do not find any reason to interfere with the reasoned order passed by the Courts below in convicting the petitioner/accused under Section 138 of the Negotiable Instruments Act.

8. At this juncture, since the learned counsel for the petitioner/accused prayed this Court to show leniency in the matter of awarding sentence by setting aside the period of sentence imposed by the Courts below into one of payment of compensation and also taking into account the fact that the respondent/complainant also did

not appear before this Court inspite of service of notice and that the petitioner is willing to pay back the cheque amount, the sentence of rigorous imprisonment imposed for six months is modified to one that of payment of compensation equivalent to the cheque amount alone.

9. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo rigorous imprisonment for a period of six months is modified. However, the petitioner/accused is directed to deposit a sum of Rs.75,000/- [Rupees seventy five thousand only] towards payment of compensation equivalent to the cheque amount to the credit of C.C.No.35 of 2008 on the file of the learned II Additional District Munsif, Bhavani within a period of five months' from the date of receipt of a copy of this order and on such deposit being made, the Court below shall disburse the same to the respondent/complainant on proper identification. In the event of failure to pay the amount of Rs.75,000/- [Rupees seventy five thousand only] within the time stipulated by this Court, the petitioner/accused has to undergo rigorous imprisonment for a period of six months as ordered by the trial court and confirmed by the first appellate court. In such event, the trial court shall take appropriate steps as are necessary to secure the presence of the petitioner/accused to undergo the sentence of six months rigorous imprisonment imposed by the Courts below.

10. With the above modification, the Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge
Fast Track Court No.IV, Bhavani
2. The II Additional District Munsif,
Bhavani
3. The Public Prosecutor,
Madras.

1 CC to Mr.N.Manokaran, Advocate, SR.No. 30548

Cr1 RC No.1128 of 2010

GGK (CO)

PSI (16.07.2015)