

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 766 of 2015
and M.P.Nos.1 and 2 of 2015

K.Prakash .. Petitioner/Appellant/Accused

Versus

R.Nagarajan .. Respondent/Respondent/Complainant

Criminal Revision Case filed under Sections 397(1) and 401 of Cr.P.C. against the Judgment dated 30.01.2015 made in Criminal Appeal No. 40 of 2011 on the file of the Additional District and Sessions Judge, Krishnagiri, confirming the judgment dated 09.05.2011 made in S.T.C. No. 51 of 2008 on the file of the Judicial Magistrate No.II, Hosur.

For Petitioner : Mr.A.Balamurugan

For Respondent : Mr.V.Nicholas

ORDER

The case of the respondent/complainant is that the petitioner/accused availed handloan of Rs.50,000/- to meet out his personal expenses. To discharge the debt, the petitioner issued a post-dated cheque dated 25.10.2007. When the respondent presented the cheque for collection, it returned unpaid with an endorsement "insufficient funds". The respondent issued a statutory notice. Since, the petitioner has not come forward to pay the amount, a complaint was preferred. The petitioner stood charged for the offence punishable under Section 138 of Negotiable Instrument Act and after trial in S.T.C.No.51 of 2008, by judgment dated 09.05.2011, the petitioner was convicted by the learned Judicial Magistrate No.II, Hosur, for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo three months simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month. The conviction and sentence imposed on the petitioner was also affirmed by the learned Additional District and Sessions Judge, Krishnagiri, on 30.01.2015 in CrI.A. No. 40 of 2011. Aggrieved against the same, the petitioner has come forward with the present Criminal Revision Case.

2. Mr.A.Balamurugan, learned counsel for the petitioner submits that he is not arguing the case on merits but confined his argument only on sentence. According to the counsel for the petitioner, he is now prepared to pay the entire cheque amount, he only wants time.

3. Mr.V.Nicholas, learned counsel for the respondent states that the cheque is dated 2007 and it is more than 8 years now, therefore atleast some compensation other than the cheque amount has to be granted.

4. Heard both sides. By consent, the Criminal Revision Case is taken up for final disposal at the stage of admission itself.

5. Taking into consideration of the fact that the learned counsel for the petitioner/accused is not arguing the matter on merits, but, he is confining his argument only on the question of sentence imposed on him by the Trial Court confirmed by the Appellate Court, apart from that the petitioner is willing to pay back the cheque amount of Rs.50,000/- and also a sum of Rs.10,000/- towards compensation amount, I am of the view that some leniency can be shown to the petitioner/accused in reducing the sentence. Accordingly, while confirming the conviction imposed by the Appellate Court, the sentence alone is modified to the effect directing the petitioner/accused to deposit the cheque amount of Rs.50,000/- and also a sum of Rs.10,000/- towards compensation amount, totalling to Rs.60,000/- (Rupees Sixty Thousand only), instead of the imprisonment awarded by the Appellate Court. The said amount has to be deposited by the petitioner to the credit of S.T.C.No.51 of 2008 on the file of the Judicial Magistrate No.II, Hosur, within a period of four weeks from the date of receipt of a copy of this order, failing which, the judgment passed by the Appellate Court shall stand revived and the respondent/complainant is at liberty to approach the Trial Court, which shall take steps to secure the accused to undergo the remaining period of sentence. On such deposit being made, the respondent/complainant is permitted to withdraw the same from the Trial Court by filing an appropriate application before the Trial Court.

6. With the above modification in sentence, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge, Krishnagiri.
- 2.-do- Thro the Prl.Sessions Judge, Dharmapuri at Krishnagiri
- 3.The Judicial Magistrate No.II, Hosur.
- 4-do- Thro The Chief Judicial Magistrate, Dharmapuri at Krishnagiri.

- 1 cc to Mr.A.Balamurugan , Advocate Sr.No.37825
1 cc to Mr. V.Nicholas, Advocate Sr.No.37908

Crl.R.C. No. 766 of 2015