

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No.1142 of 2010
& M.P.No.1 of 2010

N.Ponnusamy

.. Petitioner/Accused

Versus

M.S.Durairaj

.. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, against the judgment made by the learned Additional District and Sessions Judge (Fast Track Court No.II), Gobichettipalayam in C.A.No.13 of 2010, dated 11.08.2010 confirming the order of conviction passed by the learned Judicial Magistrate No.I, Gobichettipalayam in C.C.No.214 of 2005, dated 29.12.2009.

For Petitioner : Mr.K.Thilageswaran

For Respondent : Mr.I.C.Vasudevan

ORDER

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

2. The revision has been filed by the petitioner/accused against the Judgment dated 11.08.2010 passed in C.A.No.13 of 2010 on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Gobichettipalayam, confirming the Judgment dated 29.12.2009, passed in C.C.No.214 of 2005 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam.

3. The case of the complainant is that the accused borrowed a sum of Rs.3,00,000/- on 04.12.2004. To discharge the above said debt, the accused issued a cheque for the said amount dated 04.02.2005. When the said cheque was presented for collection, the same was returned with an endorsement "Funds Insufficient". Therefore, a statutory notice was issued to the accused. 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 and the same was taken cognizance in C.C.No.214 of 2005, on the file of the learned Judicial Magistrate No.I, Gobichettipalayam. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced to undergo one year simple imprisonment. Aggrieved by the same, the accused has filed Crl.A. No.13 of 2010 before the learned Additional District and

Sessions Judge, Gobichettipalayam and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, the petitioner has filed the present Criminal Revision Case.

4. Learned counsel appearing for the petitioner/accused also confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submitted that the cheque has been misused by the complainant. However, now the petitioner is willing to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for showing leniency against the petitioner.

5. Today when the matter is taken up for hearing, learned counsel on both sides submitted that they are willing to settle the matter.

6. I have perused the materials available on record.

7. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment.

8. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence and coupled with the fact that both the parties are willing to settle the matter, 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.3,00,000/- (Rupees Three Lakhs only). The petitioner is directed to pay the amount of Rs.3,00,000/- to the complainant within a period of three 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.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge
(Fast Track Court No.II), Gobichettipalayam
 2. The Judicial Magistrate No.I, Gobichettipalayam.
- + 1 cc to Mr.I.C.Vasudevan, Advocate SR.35976

CRL.RC.No.1142 of 2010

SV(CO)
Eu 25.09.15



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