

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 832 of 2015
and
M.P. No. 1 of 2015

Dr. Noel Doss Lazarus

..Petitioner/Appellant/Accused

Versus

S. Kalaikumar

..Respondent/ Respondent/Complainant

Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure praying to set aside the Judgment dated 29.06.2015 passed in Criminal Appeal No. 97 of 2013 on the file of III Additional District Judge, Coimbatore modifying the Judgment dated 24.06.2013 passed in C.C. No. 346 of 2012 on the file of Judicial Magistrate cum Fast Track Court No.I at Magistrate Level, Coimbatore

For Petitioner : Mr. A. Punithavanan
for Mr. C. Deivasigamani

For respondent : Mr. A. Thiagarajan

ORDER

The respondent herein has filed C.C. No. 346 of 2012 under Section 138 of The Negotiable Instruments Act before the trial Court contending that on the request made by the petitioner on 28.01.2011, he paid a sum of Rs.1,68,000/- to the petitioner on 05.02.2011 for the purpose of paying the fees for the petitioner's son. In order to repay the said amount, the petitioner gave six cheques all drawn on State Bank of India, R.S. Puram Branch, Coimbatore in favour of the respondent. While the first four cheques were honoured, on the request made by the petitioner, the respondent did not present the fifth cheque for encashment. Thereafter, in the month of August 2011, the petitioner paid Rs.10,000/- to the respondent and got the fifth cheque for a sum of Rs.35,400/- returned to him. Instead, he had issued two more cheques in favour of the respondent. When the respondent presented the cheque No.756822 dated 08.11.2011 for Rs.15,400/- drawn on Indian Overseas Bank, Kuniamuthur, Coimbatore, it was dishonoured for the reasons funds insufficient on 11.11.2011. When it was intimated to the petitioner, the petitioner requested the respondent to present the two cheques for Rs.15,400/- and Rs.32,700/- with him. When the cheques were presented for encashment on 16.02.2012, they were dishonoured for the reasons funds insufficient. Therefore, on 23.02.2012, the respondent issued a statutory notice calling upon the

petitioner to pay the cheque amount. The petitioner neither paid the amount covered in the cheques nor sent any reply, hence, the complaint was filed.

2. The trial Court upon consideration of oral and documentary evidence, has come to the conclusion that the revision petitioner has committed the offence punishable under Section 138 of The Negotiable Instruments Act. Therefore, the trial Court convicted the petitioner for the offence under Section 138 of The Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of six months with fine of Rs.5,000/-, in default to pay the fine amount, to undergo simple imprisonment for a period of three months. On appeal, the appellate Court modified the sentence alone in to one of payment of fine of Rs.60,000/- and in default to undergo simple imprisonment of six months. The Appellate Court further directed that out of the fine amount, a sum of Rs.55,000/- shall be paid to the complainant as compensation under Section 357 (3) of Cr.P.C. after appeal time and the balance of Rs.5,000/- to be paid to the credit of the State. As against the aforesaid decision of the Appellate Court, the present Criminal Revision Case is filed.

3. The learned counsel appearing for the petitioner confined his arguments with respect to reduction of sentence alone and not on merits. The learned counsel for the petitioner would contend that the Appellate Court modified the sentence imposed by the trial Court in to one of payment of compensation of Rs.55,000/-. However, even during the pendency of the appeal, as directed by the Appellate Court, the petitioner has paid a sum of Rs.50,000/- on 22.12.2014 to the credit of C.C. No. 346 of 2012. The appellate Court, without taking into account the payment made by the petitioner has erroneously directed the petitioner to pay Rs.55,000/- as compensation over and above the amount of Rs.50,000/- paid by the petitioner. The counsel for the petitioner also submitted that the calander case itself was filed for dishonour of two cheques having a total value of Rs.48,100/- (Rs.32,700/- + Rs.15,400/-) while so, the judgment of the appellate Court directing the petitioner to pay Rs.55,000/- is onerous and not in accordance with law. In any event, as the petitioner has deposited Rs.50,000/- over and above the cheque amount, the learned counsel for the petitioner prayed this Court to show leniency in the matter of imposition of sentence.

4. The learned counsel appearing for the respondent would contend that even though the cheque amount payable by the petitioner was Rs.48,100/-, the appellate Court has taken note of the fact that the cheques were issued on 17.08.2011 and 08.11.2011 respectively. The first appellate Court also taken note of the fact that the petitioner has not given any reply to the statutory notice sent by the respondent and denied his liability. Therefore, the learned counsel for the respondent prayed this Court to dismiss the Criminal Revision Case.

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5. I heard the counsel for the petitioner as well as

the respondent. The learned counsel for the petitioner confined his argument only for reduction of sentence and not on merits. As pointed out by the counsel for the petitioner, even during the pendency of the appeal before the First Appellate Court, on 23.12.2014, the petitioner has deposited a sum of Rs.50,000/- (Rupees Fifty Thousand Only) to the credit of C.C. No. 346 of 2012 under Receipt No. 1020002 issued by the learned Judicial Magistrate, F.T.C. at Magistrate Level, Coimbatore. However, without taking into account of such amount paid by the petitioner, which the petitioner paid pursuant to the direction of the appellate Court, the Appellate Court directed the petitioner to pay Rs.55,000/- as compensation. It is also to be taken note of that the cheque amount covered in C.C. No. 346 of 2012 itself is only Rs.48,100/- and the petitioner has paid Rs.50,000/- even on 23.12.2014. Therefore, I am of the view that the judgment passed by the Appellate Court is liable to be set aside.

6. In the result, the Criminal Revision Case is partly allowed upholding the conviction imposed by the courts below on the petitioner, however, the sentence imposed by the Appellate Court is modified in to one of payment of Rs.50,000/- already made by the petitioner on 23.12.2014 to the credit of C.C. No. 346 of 2012. The respondent/ complainant is permitted to withdraw the sum of Rs.50,000/- deposited by the petitioner. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR (CS-III)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

rsh

To

1. The III Additional District Judge
Coimbatore

2. The Judicial Magistrate cum Fast Track Court No.I
at Magistrate Level, Coimbatore

+1 CC to MR. C. Deivasigamani ADVOCATE. SR.NO. 46053
+1 CC to MR. A. Thiagarajan ADVOCATE. SR.NO. 45904

Cr1.R.C. No.832 of 2015

CO-VGI
JD 15/10/2015