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BIAL SLIP

The Revision Petitioner Viz., Mr.K.R.Mahadevan, aged 69 years, was directed to be released on bail in M.P.No.1 of 2010 in CrI.R.C.12 of 2010 dated 06.01.2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.12 of 2010

K.R.Mahadevan

... Petitioner

Versus

R.R.Mahalakshmi

... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 29.12.2009 passed by the learned II Additional Sessions Judge, Chennai in C.A.No.310 of 2008 in modifying the conviction and sentence passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai-15 in C.C.No.8226 of 2004 dated 14.10.2008.

For Petitioner : Ms.Bamini

For Respondent : No appearance

ORDER

The petitioner is the sole accused in C.C. No.8226 of 2004 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai-15 and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months and to pay compensation, viz., double that of the cheque amount, viz., Rs.48,000/- in default, to undergo simple imprisonment for three months. As against the conviction and sentence imposed, the petitioner filed CrI. Appeal No.310 of 2008 and the first appellate Court by judgment dated 29.12.2009 modified the same and sentenced the petitioner to undergo simple imprisonment for three months and to pay a compensation in a sum of Rs.24,000/- being the cheque amount. 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.24,000/- on 02.08.2004 from the respondent/complainant and in order to discharge the legally enforceable debt, issued a cheque dated 20.09.2004. However, when it was presented for payment, the same was returned with the endorsement "Insufficient funds". Hence, the complaint.

3. Learned Counsel appearing for the petitioner would submit that both the Courts below failed to take into consideration the fact that the complainant has not proved the date of drawal of the cheque and the existence of the legally enforceable debt. She would further submit that merely because no reply has been issued and he has not subjected himself to cross examination that would not amount to admission of the borrowal. Accordingly, he would pray for setting aside the conviction and sentence ordered by the Courts below.

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 the petitioner is a senior citizen and he is aged 73 years.

5. There is no representation on behalf the respondent/complainant.

6. Perused the records.

7. On a careful consideration of the judgments passed by both the Courts below, it is seen that the Courts below have convicted the petitioner/accused only after considering the fact that the petitioner has not rebutted his evidence as per Section 139 of the Act. 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 modifying the same into one of payment of compensation and also taking into account the fact that the petitioner is a senior citizen and his vision is also deteriorating, that the cheque amount is only a sum of Rs.24,000/-; that the petitioner is willing to pay back the cheque amount, the sentence of three months simple imprisonment ordered by the appellate court is set aside.



9. Accordingly, while confirming the conviction ordered by both the Courts below, the sentence awarded to undergo simple imprisonment for a period of three months is modified into one that of payment of compensation equivalent to the tune of cheque amount, viz., Rs.24,000/-. Therefore, the petitioner/accused is directed to pay a sum of Rs.24,000/- [Rupees twenty four thousand only], within a period of three months from the date of receipt of a copy of this order to the credit of C.C.No.8226 of 2004 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai-15. On such deposit being made, the trial Court is directed to return back the amount to the respondent/complainant on proper identification. In the event of failure to pay the cheque amount and that too, within the time stipulated by this Court, the petitioner/accused has to undergo simple imprisonment for a period of three months as ordered 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 three months simple imprisonment as modified by the first appellate Court and confirmed by this Court.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Chennai.
2. The XVII Metropolitan Magistrate,
Saidapet, Chennai-15.
3. The Public Prosecutor,
High Court, Madras.

+2cc's to M/s.N.Jothi, Advocate, S.R.No.56970

Cr1 RC No.12 of 2010

PPA(CO)
CA(03/11/2015)