

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.124 of 2010

S.Rajendran
Proprietor
M/s.Diamond Apparels
Office at 12, Nethaji Nagar 1st Street
Karumarampalayam
Uthukuli, Tiruppur ... Petitioner

Versus

S.Raja
Power of Attorney Holder of
M/s.Star Time Apparels
Office at No.654/2, Palladam Road
Tiruppur. .. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 23.10.2009 passed by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur in CrI.A.No.70 of 2008 in confirming the conviction and sentence passed by the learned Judicial Magistrate No.2, Tiruppur in S.T.C.No.2495 of 2003 dated 05.02.2008.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : No appearance

ORDER

The petitioner is the sole accused in S.T.C. No.2495 of 2003 on the file of the learned Judicial Magistrate No.2, Tiruppur 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 one month and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for one month. As against the conviction and sentence imposed, the petitioner filed CrI. Appeal No.70 of 2008 and the first appellate Court by judgment dated 23.10.2009 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 complainant undertook the job work of compacting of Hosiery goods for the petitioner/accused and in order to discharge the legally enforceable debt, the petitioner/accused issued a cheque dated 14.08.2003 for a sum of Rs.2,85,293/-. However, when it was

presented for payment, the same was returned on 13.07.2007 with the endorsement "Insufficient funds". Hence, the complaint.

3. Learned Counsel appearing for the petitioner would submit that the Courts below failed to take into consideration the fact that the cheque in question was issued by the petitioner in favour of one Velu, partner of the Top Light Chit Funds, Tiruppur and that the complainant has misused the same. He would further submit that the respondent/complainant had not produced any document to prove that the alleged commercial transaction took place between the petitioner and the complainant. He would also submit that the counsel appointed by the petitioner before the trial court had not cross-examined P.Ws.1 to 3 and the application filed to recall the witnesses was also dismissed and the judgment was also pronounced on the same day. The first appellate Court also without considering the above fact, confirmed the conviction and sentence ordered by the trial court. 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 at present, he is not doing any business and that he is the sole bread-winner in the family.

5. Though notice was served on the respondent 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 Courts below have convicted the petitioner/accused only after he admitted the signature in the disputed cheque Ex.P2 and as contended by the petitioner that it was not given to the respondent/complainant in order to discharge his dues, he has to prove the same in the manner known to law. However, he has not proved the same. In view of the said admission, the contention put forward now by the petitioner stating that the respondent/complainant has misused or abused the cheque issued, cannot be accepted. 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 that the respondent/complainant also did not appear before this Court, the sentence of rigorous imprisonment imposed for

a period of one month is modified into one that of payment of compensation to the tune of Rs.4,00,000/- as the cheque for a sum of Rs.2,85,293/- was issued by the petitioner in the year 2003.

9. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo rigorous imprisonment for a period of one month is modified. However, the petitioner/accused is directed to deposit a sum of Rs.4,00,000/- [Rupees four lakhs only] to the credit of S.T.C. No.2495 of 2003 on the file of the learned Judicial Magistrate No.2, Tiruppur or pay directly to the respondent/complainant within a period of three months' from the date of receipt of a copy of this order. In the event of failure to pay the amount ordered now and that too, within the time stipulated by this Court, the petitioner/accused has to undergo rigorous imprisonment for a period of one month 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 one month 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

vj2
To

1. The Additional District and Sessions Judge
Fast Track Court No.IV, Coimbatore at Tiruppur.
2. The Judicial Magistrate No.2, Tiruppur.
3. The Public Prosecutor, Madras

+ 1 cc to Mr.N.S. Sivakumar, Advocate Sr.52496

Crl RC No.124 of 2010

LRS (CO)
Eu 12.10.15