

BAIL SLIP

The Petitioner/Accused viz., Narayana Reddy was directed to be released on Bail as per order of this court dated 18.11.2009 and made in M.P.No.1 of 2009 in CrI.R.C.No.1108 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1108 of 2009

Narayana Reddy ... Petitioner(Accused)

Versus

Mariyaseren ... Respondent(Complainant)

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 30.09.2008 passed by the learned Principal Sessions Judge, Krishnagiri in C.A.No.41 of 2004 in confirming the order dated 21.09.2004 passed by the learned Judicial Magistrate No.II, Hosur in C.C.No.194 of 2003.

For Petitioner : Mr.R.C.Paul Kanagaraj

ORDER

The petitioner is the sole accused in C.C. No.194 of 2003 on the file of the learned Judicial Magistrate No.II, Hosur and he has been convicted for the offence under Section 138 r/w 142 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month. As against the conviction and sentence imposed, the petitioner filed Criminal Appeal No.41 of 2004 and the first appellate Court by judgment dated 30.09.2008 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 petitioner/accused borrowed a sum of Rs.17,500/- on 04.04.2002 and in order to discharge the legally enforceable debt, issued a cheque bearing No.854486 dated 17.04.2003 drawn on the Indian Overseas Bank, Hosur for a sum of Rs.19,500/-. However, when it was presented for payment, the same was returned on 19.04.2003, with the endorsement "insufficient fund". Hence, the complaint.

3. Learned counsel appearing for the petitioner would submit that the matter was earlier referred to Mega Lok Adalat. However, the matter was not settled and hence the matter was referred back to Court. According to the petitioner, the matter is pending before this Court for the past six years. Though the learned counsel for the petitioner would try to vaguely submit that the petitioner has not borrowed a sum of Rs.19,500/- as claimed by the respondent/complainant, however, fairly submitted that the loan amount has to be repaid and the petitioner is also willing to repay the same. Accordingly, he would only pray for leniency of the sentence imposed on the petitioner/accused as six months simple imprisonment imposed by the Courts below is on the higher side.

4. Though notice has been served on the respondent/complainant none appeared. Even before the Mega Lok Adalat, no one 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.

5. Perused the records.

6. On a careful consideration of the judgments passed by both the Courts below, it is seen that the petitioner has admitted the issuance of the cheque to the respondent to discharge his legally enforceable debt. When there is a clear admission regarding the transaction, receipt of money and issuance of the cheque, 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.

7. At this juncture, since the learned counsel for the petitioner/accused prayed this Court to show leniency in the matter of awarding sentence by setting aside the period of sentence imposed by the Courts below into one of payment of compensation and also taking into account the fact that the respondent/complainant also did not appear before this Court inspite of service of notice; that the matter is pending for the past six years and that the petitioner is willing to pay back the cheque amount, the sentence of simple imprisonment imposed for six months is modified to one that of payment of compensation double that of the cheque amount.

8. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo simple imprisonment for a period of six months is modified into one of payment of compensation double that of the cheque amount. Accordingly, the petitioner/accused is directed to pay a sum of Rs.39,000/- [Rupees thirty nine thousand only] directly to the respondent/complainant within a period of three months from the date of receipt of a copy of this order or deposit the same to the credit of C.C.No.194 of 2003 on the file of the learned Judicial Magistrate No.II, Hosur. If any

such deposit is made, the Court below shall disburse the said amount to the respondent/complainant on proper identification. In the event of failure to pay the amount within the time stipulated by this Court, the petitioner/accused has to undergo simple imprisonment for a period of three months, instead of six months 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 three months simple imprisonment imposed by the Courts below.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Krishnagiri
2. The Judicial Magistrate No.II,
Hosur
3. -do- Through The Chief Judicial Magistrate,
Dharmapuri at Krishnagiri.

Cr1 RC No.1108 of 2009

MP(CO)
CA(07/07/2015)

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