

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.1117 of 2009
and
M.P.Nos.1 to 3 of 2009

Rajendran

... Petitioner/ Accused

vs.

S.Selvaraj

... Respondent/ Complainant

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records and set aside the Judgment of the learned Judicial Magistrate No.I, Gobichettipalayam made in C.C.No.221 of 2003 dated 4.9.2008 which was confirmed by the Appellate Court in C.A.No.254 of 2008 on the file of the learned Additional District and Sessions Judges, Gobichettipalayam (FTC.II) by Judgment dated 9.10.2009.

For Petitioner : Mr.A.Radhakrishnan

O R D E R

The petitioner is the sole accused in C.C.No.221 of 2003 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam and he has been convicted for the offence under section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for 3 months and to pay a fine of Rs.2,000/-, in default to pay the fine, to undergo simple imprisonment for a period of one month. As against the conviction and sentence imposed, the petitioner filed Criminal Appeal No.254 of 2008 and the first appellate Court by judgment dated 09.10.2009 confirmed the same. Aggrieved by the same the present Criminal Revision Case is filed.

2. The case of the complainant/respondent is as follows:-

The accused/petitioner is the friend of the complainant and the accused borrowed a sum of Rs.2,00,000/- for his family expenses on 9.2.2003. He promised to repay the same within two months. On 14.3.2003, in order to discharge the legally enforceable debt, the accused issued a cheque for Rs.2,00,000/-. The complainant presented the cheque on 19.3.2003 and the same was returned on 25.3.2003, with an endorsement as "insufficient fund". Even after issuance of legal notice, the accused/petitioner failed to pay the debt. Hence the complaint.

3. Learned counsel appearing for the petitioner would submit that the complainant is a stranger to the accused/petitioner and the petitioner borrowed a sum of Rs.50,000/- from one Manohar, a conductor in C.T.C., and a co-worker to the petitioner, and he is paying the interest regularly and so far he has paid a sum of Rs.75,000/- towards interest. At the time of borrowal, the accused issued a blank cheque to Manohar towards security of the amount borrowed from Manohar, which is now sought to misuse by the complainant in collusion with Manohar. Apart from that, on the date of issuance of cheque, he was on duty. Though the learned counsel for the petitioner would try to submit that the petitioner has not borrowed a sum of Rs.2,00,000/- 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 lenience of the sentence imposed on the petitioner/accused.

4. Though notice has not been served on the respondent/complainant, 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 had not taken any action either against the complainant or Manohar. If the allegation of the petitioner that he had issued the cheque to Manohar as security is true, he would have definitely taken action for the misuse of the cheque. No stranger will take a legal action against a person whom he has no contract. Further, with respect to the contention of the petitioner that the ink used for the signature and other details filled in the cheque are different from each other, the accused has not come forward to examine any one on his side. The accused has not discharged the burden of proof and both the Courts below found the accused guilty of the charge. 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.

7. At this juncture, since the learned counsel for the petitioner/accused prays this Court to show leniency in the matter of sentence awarded 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 matter is pending for the past six years here, considering the facts and circumstances of the case, I am inclined to modify the sentence of simple imprisonment imposed on the accused for three months into one that of payment of compensation of a total sum of Rs.3,50,000/-.

8. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo simple imprisonment for a period of three months is modified into one of payment of compensation and the petitioner/accused is directed to pay a sum of Rs.3,50,000/- [Rupees three lakhs and fifty 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.221 of 2003 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam. 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. 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. The connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

asvm

To

1. The Additional District and Sessions Judges,
Gobichettipalayam (FTC.II)
2. do thro the Principal District and Sessions Judge
Erode
3. The Judicial Magistrate No.I,
Gobichettipalayam.
4. do thro the Chief Judicial Magistrate
Erode

Copy to

The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr.R. Priyakumar, Advocate, Sr. 32666

CrI.R.C. No.1117 of 2009
and
M.P.Nos.1 to 3 of 2009

AK (CO)
kk 24/7



WEB COPY