

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1132 of 2009
and
M.P.No.1 of 2009

Saravanakumar .. Petitioner/Accused

Versus

N.Karthikeyan ... Respondent/Complainant

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 09.09.2009 passed by the learned I Additional Sessions Judge, Coimbatore in C.A.No.251 of 2008 in confirming the conviction and sentence passed by the learned Judicial Magistrate, No.VII, Coimbatore in S.T.C.No.558 of 2005 dated 07.07.2008.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.P.Rameshkumar

ORDER

The petitioner is the sole accused in S.T.C.No.558 of 2005 on the file of the learned Judicial Magistrate No.VII, Coimbatore 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 one year. As against the conviction and sentence imposed, the petitioner filed Crl. Appeal No.251 of 2008 and the first appellate Court by judgment dated 09.09.2009 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 petitioner/accused purchased garments from the respondent/complainant for a sum of Rs.3,42,000/- as per credit bill dated 05.11.2004 and in order to discharge the legally enforceable debt, issued a cheque for a sum of Rs.3,40,000/-. 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 the alleged statutory notice stated to be issued by the respondent/complainant was sent to the wrong address and that the petitioner had never resided in the said address. Therefore, he has not received the same. Further, he would submit that the complainant has preferred the complaint in the capacity of proprietorship of Appa

International, however, his signature was not found in the registration certificate. 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 leniency in the sentence imposed on the petitioner/accused as one year simple imprisonment imposed by the Courts below is on the higher side.

5. Learned counsel appearing for the respondent/complainant would submit that both the Courts below only after analysing the entire oral and documentary evidence adduced, convicted the petitioner/accused, warranting no interference in this revision. However, he would submit that if the petitioner/accused is willing to pay back the cheque amount along with interest as the Cheque was issued in the year 2004 itself and already 10 years have gone, without even getting a single pie, this Court may consider the request made by him by passing stringent conditions.

6. Heard both sides 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 considering the fact that the petitioner had not disputed the receipt of 250 cartons of men's vest under Ex.P2 and the value of Rs.3,42,000/- also has been accepted. However, after reducing the sum of Rs.2,000/-, the cheque has been issued by rounding it off to Rs.3,40,000/-, which are quite natural in the business transactions between two parties. In such circumstances, the contention put forward now by the petitioner stating that the respondent/complainant has not sent the statutory notice to the correct address; that the complainant is not the proprietorship of the company, which supplied the garments 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 also taking into account the fact that the respondent/complainant is also agreeable for the same, that the cheque amount is to the tune of Rs.3,40,000/- and 10 years have elapsed since then; that the petitioner is willing to pay back the cheque amount, the sentence of rigorous imprisonment imposed for a period of one year is modified into one that of payment of compensation double that of the cheque amount.

9. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo simple imprisonment for a period of one year is modified. However, the petitioner/accused is directed to either pay the sum of Rs.6,80,000/- [Rupees six lakhs and eighty thousand only], viz.,

double that of the cheque amount as compensation, directly to the respondent/complainant or deposit to the credit of S.T.C.No.558 of 2005 on the file of the learned Judicial Magistrate No.VII, Coimbatore within a period of eight weeks' from today. 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 simple imprisonment for a period of one year 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 year simple imprisonment as ordered by the courts below.

10. With the above modification, the Criminal Revision Case is partly allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

vj2

To

1. The I Additional Sessions Judge, Coimbatore
- 1a.Do thro the principal sessions judge, Coimbatore.
2. The Judicial Magistrate, No.VII, Coimbatore
- 2a.Do thro the Chief Jidicial Magistrate, Coimbatore.
3. The Public Prosecutor, Madras

+1 cc to M/s. C. Prakasam, Advocate, SR 34589
+1 cc to M/s. P. Rameshkumar, SR 34259

mp(co)
kra(23/07)

Cr1 RC No.1132 of 2009

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