

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.114 of 2009

S. Rajesh ... Petitioner/Appellant/Accused

Versus

1. N. Murugabhopathy ...1st Respondent/Respondent/Complainant
2. The State
rep. by Inspector of Police
B-7, Police Station
Coimbatore ...2nd Respondent/Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the Judgment dated 30.09.2008 passed in Criminal Appeal No. 136 of 2008 on the file of Additional District and Sessions Judge cum Fast Track Court No.1, Coimbatore confirming the Judgment dated 23.04.2008 passed in C.C. No. 657 of 2003 on the file of Judicial Magistrate No.3, Coimbatore.

For Petitioner : Mr. B. Nedunchezhiyan
For respondents : Mr. C.R. Prasanna for R1
Mr. V. Arul
Government Advocate (Crl.side) for R2

ORDER

The petitioner has come forward with this Criminal Revision Case challenging the order passed by the Appellate Court confirming the conviction and sentence imposed by the trial Court upon conclusion of the proceedings under Section 138 of The Negotiable Instruments Act.

2. The first respondent herein has filed C.C. No. 657 of 2003 before the trial Court contending that on 23.07.2001, the petitioner herein has borrowed a sum of Rs.7,00,000/- from him and agreed to pay interest at the rate of 24% per annum. On the date of borrowing the amount, the petitioner also executed a Demand Promisory note in favour of the first respondent. In order to discharge such liability, the petitioner has issued a cheque dated 15.02.2003 for Rs.7,00,000/- drawn on Times Bank, Trichy Road Branch. As per the request of the petitioner, the first respondent presented the cheque dated 15.02.2003 on 08.04.2003 with his bankers T.T.I. Bank, Avinashi Road. But the cheque was returned on 10.04.2003 for the reason 'account closed'. Therefore, on 19.04.2003, the first respondent issued a statutory notice to the petitioner calling upon him to pay the cheque amount. However, the notice was returned unserved with an endorsement "refused". Thereafter, the first respondent has filed the above said Calander Case before the trial

Court. Upon conclusion of trial, the trial Court found the petitioner guilty of the offence punishable under Section 138 of The Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year with fine of Rs.3,000/-, in default, to undergo simple imprisonment for a period of one year. The petitioner has unsuccessfully assailed the order passed by the trial Court inasmuch as the appeal was dismissed by the Appellate Court confirming the conviction and sentence imposed on him.

3. The learned counsel for the petitioner would mainly contend that the petitioner has issued the cheque in an account maintained by him with Times Bank. However, Times Bank got amalgamated with H.D.F.C. Bank even in the year 1999. Therefore, the return of the cheque for the reason 'account closed' is not within his knowledge or control. The learned counsel for the petitioner therefore would contend that non-consideration of the above vital fact by the courts below calls for interference by this Court. However, the learned counsel for the petitioner would submit that if some time is granted, the petitioner will be in a position to repay the cheque amount.

4. Per contra, the learned counsel for the first respondent would contend that petitioner has admitted the execution of the cheque. The petitioner also admitted that upon borrowal of the loan amount of Rs.7,00,000/- he has paid interest to the first respondent for some time. Even if the Times Bank is amalgamated with HDFC Bank, as contended, it will not absolve the liability of the petitioner who issued the cheque to the first respondent. In any event, the petitioner has not chosen to receive the statutory notice, but refused to receive it. In such circumstance, it can be presumed that the petitioner has received the statutory notice but did not issue any reply thereof. The trial Court as well as the appellate Court have appreciated all the material evidence while convicting the revision petitioner and such a conclusion arrived at by the Courts below needs no interference by this Court. As far as the plea for payment of cheque amount, the learned counsel for the first respondent would contend that if the petitioner pays the cheque amount within a specified period, this Court can consider modifying the conviction and sentence imposed on him.

5. I heard the counsel for both sides. The petitioner borrowed the amount of Rs.7,00,000/- on 23.07.2001 and the cheque was issued by the petitioner on 15.02.2003 for Rs.7,00,000/-. Upon dishonour of the cheque, the first respondent issued a statutory notice but the petitioner has not chosen to receive the same. Rather, the petitioner refused to receive it and it was returned 'unserved' by the postal authorities. As pointed out by the counsel for the first respondent, at this stage, sending the petitioner to prison will not be of beneficial to the first respondent. Therefore, accepting the contention of the counsel for the petitioner, I am inclined to grant some time to the petitioner to pay the cheque amount. Accordingly, the petitioner is directed to either pay the cheque amount of Rs.7,00,000/- to the first respondent or deposit it to the credit of C.C. No. 657 of 2003 on the file of learned Judicial Magistrate No.3, Coimbatore within a period of three months from the date of receipt of a copy of this order. If the amount is

paid within the period stipulated above, the conviction and sentence imposed on the petitioner by the courts below shall stand set aside. On the other hand, if the cheque amount is not paid within the above said period, the orders passed by the Courts below shall stand revived. In such event, the trial Court shall take necessary steps as are necessary to secure the presence of the petitioner to enable him to undergo the imprisonment. The Criminal Revision Case is ordered in the above terms.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge
cum Fast Track Court No.1
Coimbatore
2. The Judicial Magistrate No.3
Coimbatore.
- 3.The Principal Sessions Judge, Coimabgore.
- 4.The Chief Judicial Magistrate, Coimbatore.

Copy to:

- 1 cc to Mr. B. Nedunchezhiyan, Advocate Sr.No.44132
- 1 cc to Mr. C.R. Prasanna , Advocate Sr.No.44248

ctk(co)
pmk.15.9.2015

CrI.R.C. No.114 of 2009

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