

BAIL SLIP

That the petitioner herein/Accused Viz., T.Elango, was directed to be released on bail as per order of this Court dated 3.12.2009 and made in M.P.No.1 of 2009 in CrI.R.C.No.1153/2009 as stated within.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1153 of 2009

T.Elango .. Petitioner/Accused

Versus

T.Nagaraj .. Respondent/Complainant

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 31.03.2009 passed by the learned I Additional Sessions Judge, Erode in C.A.No.293 of 2008 in confirming the order dated 24.10.2008 passed by the learned Judicial Magistrate, No.3, Erode in C.C.No.320 of 2007.

For Petitioner : Mr.S.Kaithamalaikumaran

For Respondent : Mr.M.Guruprasad

ORDER

The petitioner is the sole accused in C.C. No.320 of 2007 on the file of the learned Judicial Magistrate No.3, Erode 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 year and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for two months. As against the conviction and sentence imposed, the petitioner filed CrI. Appeal No.293 of 2008 and the first appellate Court by judgment dated 31.03.2009 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 borrowed a sum of Rs.50,000/- on 06.06.2007 from the respondent/complainant and in order to discharge the legally enforceable debt, issued a cheque dated 06.07.2007. However, when it was presented for payment, the same was returned on 13.07.2007 with the endorsement "Accounts closed". 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 to the complainant's father as a security during the year 2002 and that the complainant has misused the same in the year 2007. He would further submit that the respondent/complainant had not produced any document to prove that the complainant was involved in money lending business. 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 one year rigorous 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, this Court may consider the request made by him for reducing the sentence awarded by the Courts below.

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 admission made by him to the effect that the cheque in question was issued by putting his signature as a security for the repayment of the loan borrowed from the complainant's father. 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 also taking into account the fact that the respondent/complainant is also agreeable for the same, that the cheque amount is only to the tune of Rs.50,000/-; 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 rigorous imprisonment for a period of one year is modified. However, the petitioner/accused is directed to pay a sum of Rs.1,00,000/- [Rupees one lakh only], viz., double that of the cheque amount as compensation, directly to the respondent/complainant within a period

of four months' 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 rigorous imprisonment for a period of nine months, instead 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 nine months rigorous imprisonment imposed now by this Court in this criminal revision case.

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

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge
Fast Track Court No.IV, Bhavani.
- 2.-do- Thro The Principal Sessions Judge, Erode.
3. The II Additional District Munsif, Bhavani
- 4.The Judicial Magistrate No.3, Erode.
- 5.-do- Thro The Chief Judicial Magistrate Erode.
- 6.The Judicial Magistrate No.3, Erode.
- 7.The District Collector, Erode.
8. The Public Prosecutor, Madras.

1 cc to Mr.A.K.Kumara Samy , Advocate Sr.No.30922
1 cc to Mr. .M.Guruprasad, Advocate Sr.No.30754

Cr1 RC No.1153 of 2009

ug(co)
pmk.9.7.2015