

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.1319 of 2010

Mani

... Petitioner/Appellant/Accused

Versus

M/s. J.G.Spining Mills (P) Ltd.,
rep. by its Power of Attorney
Tr.N.Kumar

... Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.4 of 2009 on the file of the learned Additional District & Sessions Judge, Fast Track Court-V, Tiruppur and set aside the order dated 26.07.2010 confirming the conviction and the sentence passed in S.T.C.No.2932 of 2007 on the file of the learned Judicial Magistrate-I, Tiruppur dated 10.12.2008.

For Petitioner : Mr.A.D.Jagadish Chandra
for Mr.R.Ganeshkumar

For Respondent : Mr.Karthik
for M/s.T.S.Gopalan & Co

ORDER

The petitioner is the accused and the respondent is the complainant.

2. The revision has been filed by the petitioner against the Judgment dated 26.07.2010 passed in Crl.A. No. 4 of 2009 on the file of the Additional District & Sessions Judge, Fast Track Court No.V, Tiruppur, confirming the Judgment dated 10.12.2008 passed in S.T.C.No.2932 of 2007 on the file of the learned Judicial Magistrate-I, Tiruppur.

3. The case of the complainant is that the accused in his financial transaction with the complainant, borrowed a sum of Rs.8,54,000/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 28.06.2007. When the said cheque was presented for collection, the same was returned with an

endorsement "insufficient funds". Therefore, a statutory notice was issued to the accused on 20.08.2007. Since no payment was made even thereafter, the complainant has filed the present complaint for the offences punishable under Section 138 of the Negotiable Instrument Act and the same was taken cognizance in S.T.C. No. 2932 of 2007 on the file of the learned Judicial Magistrate, Tiruppur. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced the accused to undergo one year simple imprisonment and to pay a compensation of Rs.8,54,000/-. Aggrieved by the same, the accused has filed CrI.A. No.4 of 2009 before the learned Additional District & Sessions Judge, Fast Track Court-V, Tiruppur, and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, the petitioner has preferred the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused submits that he and respondent are known each other and he has taken his best efforts to pay the amount and seeks time to pay the cheque amount. Both the courts below have not properly adduced the evidence and came to the wrong conclusion which is erroneous.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioner has not chosen to sent any reply notice for the statutory notice issued on 20.08.2007. This aspect has been duly considered by both the courts below. It is further contended that the cheque is of the year 2007 and since the cheque is for a considerable amount prays for a suitable order from this Court.

6. After some elaborate arguments, the learned counsel for the petitioner agreed to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. Learned counsel for the respondent has no serious objection for the submission made by the learned counsel for the petitioner but had left to the decision of this Court.

7. I have perused the materials available on record.

8. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and to pay a compensation of Rs.8,54,000/-.

9. On a careful analysis of the entire records, it is clear that there was a financial transactions between the accused and the complainant. Only to settle the amount, the cheque in question was issued and when the same was presented, it was returned with an endorsement "insufficient funds". There is no dispute with regard

to the issuance of cheque in question. Though it is the submission of the learned counsel for the petitioner that the cheque in question has been issued to some other financier as security, he has not chosen to examine the said financier. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

10. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence and also the fact that the petitioner is willing to settle the amount in question, I am of the view that instead of sending the petitioner to jail, in the interest of justice, he may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentence is modified to that of payment of compensation to the tune of Rs.10,00,000/- (Rupees Ten lakhs only). The petitioner is directed to pay the amount of Rs.10,00,000/- to the complainant, within a period of three months from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to pay the said amount/or deposit in Court within the above stipulated period, he shall undergo the period of sentence as imposed by the Courts below and this order will not enure to the benefit of the accused. On such deposit being made, the Court below shall disburse the same on proper verification to the complainant.

11. With the above direction and modification, the Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

smi

Sub Assistant Registrar

To

1.The Additional District & Sessions Judge,
Fast Track Court V, Tiruppur.

2.The Judicial Magistrate I, Tiruppur.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.43767

CRL.RC.No.1319 of 2010

KJI (CO)
CA(21/09/2015)