

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.200 of 2010
& MP.NOs. 2 & 3/2010

S.P.Navaneethakrishnan .. Petitioner/Appellant/Accused

Versus

Mrs.A.Eswari

.. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code against the order dated 27.04.2009 made in C.A.No.135 of 2008 on the file of the First Additional District Sessions Court, Coimbatore modifying the order dated 01.04.2008 made in S.T.C.No.27 of 2006 on the file of the Judicial Magistrate No.VII, Coimbatore.

For Petitioner : Mr.S.Saravanakumar
For Respondent : No Appearance

ORDER

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

2. This revision has been filed by the petitioner against the order dated 27.04.2009 made in C.A.No.135 of 2008 on the file of the First Additional District Sessions Court, Coimbatore modifying the order dated 01.04.2008 made in S.R.C.No.27 of 2006 on the file of the Judicial Magistrate No.VII, Coimbatore.

3. The case of the complainant, that the accused in his financial transaction with the complainant for the purpose of business, borrowed a sum of Rs.50,000/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 25.09.2005. 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 05.12.2005. 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.27

of 2006 on the file of the learned Judicial Magistrate-VII, Coimbatore. Ultimately, after trial, the trial court convicted both the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced the accused to undergo one year simple imprisonment. Aggrieved by the same, the accused has filed CrI.A. No.135 of 2008 before the learned First Additional District Sessions Court, Coimbatore and the same was partly allowed by confirming the conviction, modified the sentence into one of compensation of Rs.70,000/- in default to undergo six months simple imprisonment and two months time was granted to pay the said compensation. Aggrieved by the order passed by the First Appellate Court, the petitioner/accused had preferred the present Criminal Revision Case.

4. After some elaborate arguments learned counsel appearing for the petitioner/accused seeks modification on the sentence imposed on the petitioner by the courts below. Further the learned counsel for the petitioner would contend that the appellate court while modifying the sentence had ordered compensation of Rs.70,000/- which is more than the cheque amount and he is prepared to pay the cheque amount and prays for showing some leniency.

5. Though notice had been duly served on the respondent and the name has been printed in the cause list, he has not chosen to appear either in person or through counsel. However, in view of judgment of the Hon'ble Apex reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka and in the light of the principles culled out in the said judgment this Criminal Revision case is decided on merits.

6. I have perused the materials available on record.

7. 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.

8. 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. 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.

9. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that the appellate court had modified the sentence into one of compensation of Rs.70,000/- and the fact that there is no point in sending the petitioner to jail and also the fact that the

petitioner is willing to settle the amount in question, I am of the view in the interest of justice, the petitioner may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentenced is modified to that of payment of compensation to the tune of Rs.50,000/- (Rupees Fifty Thousand only) the cheque amount. The petitioner is directed either to pay an amount of Rs.50,000/- to the complainant or deposit the same to the credit of S.T.C.No.27 of 2006 within a period of two 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.

10. With the above direction and modification, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.

sd/
ASSISTANT REGISTRAR (CS-V)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

smi

To

1. The First Additional District Sessions Court, Coimbatore.
2. The Judicial Magistrate No.VII, Coimbatore.

+1 CC to MR.S.Saravanakumar Advocate. SR.NO. 56062

सत्यमेव जयते

CRL.RC.No.200 of 2010

CO-MSM
JD 05/11/2015

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