

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.289 of 2010

Krishnamoorthy .. Petitioner/Accused
Versus
T.Subramani ... Respondent/Complainant

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 03.03.2010 made in Crl.Appeal No.99 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Salem, in confirming the judgment dated 03.09.2009 made in C.C.No.326 of 2005 on the file of the learned Judicial Magistrate No.II, Salem.

For Petitioner : Mr.C.Prabakaran
For Respondent : Mr.M.Rajsekar

ORDER

The petitioner is the sole accused in C.C. No.326 of 2005 on the file of the learned Judicial Magistrate No.II, Salem and he has been convicted for an offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month. As against the conviction and sentence imposed, the petitioner filed Criminal Appeal No.99 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.2, Salem and the First Appellate Court by judgment dated 03.03.2010 confirmed the same. Aggrieved by the same, the present Criminal Revision Case came to be filed.

2. The case of the complainant in brief is as follows:

The petitioner/accused borrowed a sum of Rs.3,50,000/- from the complainant on 08.01.2005 and in order to discharge the said debt, the petitioner has given a cheque dated 17.02.2005 to the complainant. When it was presented for payment through the bankers, the same was returned on 11.03.2005, with an endorsement "insufficient fund". Hence, the complaint.

3. Learned counsel appearing for the petitioner though disputed the fact of the loan amount said to have been received

by the petitioner, now, fairly submitted that instead of undergoing imprisonment, the petitioner is willing to repay the loan amount. Accordingly, he would only pray for leniency of the sentence imposed on the petitioner/accused as one year simple imprisonment imposed by the Courts below is on the higher side.

4. Learned Counsel for the respondent would submit that the respondent is ready to receive the amount, however, the same should be double the loan amount since the loan transaction is of the year 2005.

5. Heard the learned Counsel on either side.

6. Since the learned counsel for the petitioner/accused prays this Court to show leniency in the matter of awarding sentence by setting aside the period of sentence imposed by the Courts below into one of payment of compensation and also taking into account the fact that the matter is pending for the past ten years and that the petitioner is willing to pay back the cheque amount, the sentence of simple imprisonment imposed for one year is modified to one that of payment of compensation of Rs.5,00,000/-.

7. 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 into one of payment of compensation of Rs.5,00,000/-. Accordingly, the petitioner/accused is directed to pay a sum of Rs.5,00,000/- [Rupees Five Lakhs only] directly to the respondent/complainant within a period of two months from the date of receipt of a copy of this order or deposit the same to the credit of C.C.No.326 of 2005 on the file of the learned Judicial Magistrate No.II, Mettur. If any such deposit is made, the Court below shall disburse the said amount to the respondent/complainant on proper identification. In the event of failure to pay the amount 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 that are necessary to secure the presence of the petitioner/accused to undergo the sentence of one year simple imprisonment imposed by the Courts below after setting off the period already undergone by the petitioner under Section 428 of Cr.P.C.

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

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Additional District and Sessions Judge
(Fast Track Court No.II), Salem
2. The Judicial Magistrate No.II, Mettur
3. The Public Prosecutor, Madras

+1 cc to Mr.C.Prabakaran Advocate sr 54658

+1 cc to Mr.M.Rajasekar Advocate sr 54670

Cr1 RC No.285 of 2010

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