

BAIL SLIP

The petitioner/Accused was directed to be released on bail in and by the order of this Court dated 16.02.2009 made in Crl.M.P.No.1 of 2009 in Crl.R.C.No.200/2009 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.200 of 2009

D.Kannan
Proprietor
M/s.Sri Ram Books and Stationery
No.32, S.K.C.Road
Erode-1.

... Petitioner

Versus

M/s.Mehra Computer Systems Ltd.,
rep.by its Power of Attorney Agent
Mr.R.P.G.Menon

.. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 30.01.2009 passed by the learned I Additional Sessions Judge, Chennai in C.A.No.57 of 2006 confirming the conviction and sentence passed by the learned XV Metropolitan Magistrate, George Town, Chennai dated 06.02.2006 in C.C.No.5354 of 2000.

For Petitioner : Mr.D.Selvaraju

For Respondent : Notice served

ORDER

The petitioner is the sole accused in C.C. No.5354 of 2000 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months and to pay a compensation of Rs.55,000/-. As against the conviction and sentence imposed, the petitioner filed Crl. Appeal No.57 of 2006 and the first appellate Court by judgment dated 30.01.2009 confirmed the same. Aggrieved by the same, the present Criminal Revision Case is filed.

<https://hcservices.ecourts.gov.in/hcservices/>

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

The petitioner/accused purchased computer stationeries to the

tune of Rs.3,97,930/- and in order to discharge the legally enforceable debt towards part payment, issued two cheques for a sum of Rs.15,000/- and 25,000/- respectively. However, when it was presented for payment, the same was returned with the endorsement as "Account closed". Hence, the complaint.

3. Learned counsel appearing for the petitioner would submit that both the Courts below failed to take into consideration the fact that the Power of Attorney, which was given in favour of said R.P.G.Menon was executed by the Managing Director in his individual capacity and that he was not conferred with any such power through any valid resolution. He would further submit that the said R.P.G.Menon is not an employee of the company and he was not holding any post. Further the said person has only affixed his signature in the complaint only in his individual capacity and not as the person authorized by the company as a Power Agent. Accordingly, he would pray for setting aside the judgments of both the courts below by allowing this criminal revision case.

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 warrant no interference, then, he pray for reduction of the sentence imposed on the petitioner/accused as six months simple imprisonment imposed by the Courts below is on the higher side.

5. Though notice has been ordered on the respondent/complainant, when the matter came up for admission, till date, the same is not served and the matter is pending for the past six years without even service of notice. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka] after hearing the learned counsel for the petitioner.

6. Heard the learned counsel for the petitioner and perused the records.

7. On a careful consideration of the judgments passed by both the Courts below, it is seen that the petitioner has purchased the computer stationeries from the respondent/complaint and had issued the cheques in question only to discharge his legally enforceable debt. Though the petitioner/accused would contend that he only issued a Demand Draft in lieu of his debt, the same was not proved in the manner known to law. Further the complainant has sent back the returned the cheques to the petitioner/accused, however, he has not claimed the same. In view of the above factual finding given by the Courts below, the contention put forward now by the petitioner stating that the respondent/complainant has preferred the complaint not in the capacity of the Power Agent and only in his individual capacity, 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 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 respondent/complainant also did not appear before this Court and that the petitioner is willing to pay back the cheque amounts, the sentence of simple imprisonment imposed for six months is modified to one that of payment of compensation as ordered by the trial court to the tune of Rs.55,000/-.

9. While confirming the conviction ordered by both the Courts below, the sentence awarded to undergo simple imprisonment for a period of six months is modified into one that of payment of compensation as ordered by the trial court in a sum of Rs.55,000/- and confirmed by the first appellate Court. Accordingly, the petitioner/accused is directed to deposit a sum of Rs.55,000/- [Rupees fifty five thousand only] towards payment of compensation to the credit of C.C.No.5354 of 2000 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai within a period of four months' from the date of receipt of a copy of this order and on such deposit being made, the Court below shall disburse the same to the respondent/complainant on proper identification. In the event of failure to pay the amount of Rs.55,000/- [Rupees fifty five thousand only] within the time stipulated by this Court, the petitioner/accused has to undergo simple imprisonment for a period of six months 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 six months simple imprisonment imposed by the Courts below.

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 I Additional Sessions Judge, Chennai.
- 2.Thro The Principal Sessions Judge, Chennai.
3. The XV Metropolitan Magistrate, George Town, Chennai
- 4.-Do- Thro The Chief Metropolitan Magistrate,Egmore, Chennai(for information)
5. The Public Prosecutor, Madras.

Copy to:The Section Officer, Criminal Section, High Court, Madras.

1 cc to Mr.D.Selvaraju, Advocate Sr.No.44503/15

Crl RC No.200 of 2009

ak(co)pmk.22.9.2015