

Bail Slip

The Petitioners/Accused 3 and 4 were directed to be released on bail in and by the order of this court dated 26/02/2009 made in M.P.1/2009 in Crl.R.C.208/2009 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. 208 of 2009

1. Ramanan

2. Manivannan

Authorised Signatory of RMN Home Applicances

No.141-A, Purasawalkam High Road

Kellys, Chennai - 600 007

.. Petitioners/Accused 3&4

Versus

Tmt. Anitha Suri

Proprietor

SAS Investments

Rep. by its Power of Attorney Saravanakumar

No.7, Vidhyothaya First Main Road

T.Nagar, Chennai - 600 017

.. Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the Judgment dated 12.08.2008 made in Criminal Appeal No.411 of 2005 on the file of IV Additional Sessions Judge, Chennai modifying the order passed in C.C. No. 11000 of 2002 dated 09.11.2005 on the file of XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioner

: Mr. M. Rajasekar

For Respondent

: No appearance

ORDER

The petitioner has come forward with this Criminal Revision Case questioning the correctness of the Judgment dated 12.08.2008 passed in Criminal Appeal No.411 of 2005 on the file of IV Additional Sessions Judge, Chennai modifying the order passed in C.C. No. 11000 of 2002 dated 09.11.2005 on the file of XIV Metropolitan Magistrate, Egmore, Chennai.

2. The complainant/respondent herein has filed the complaint under Section 138 of The Negotiable Instruments Act, which was taken as C.C. No. 11000 of 2002 before the trial court, contending that the accused 1 to 4 have borrowed a sum of Rs.1,50,000/- on 18.10.2001 for development of their business and agreed to repay the amount along with interest in 12 instalments at the rate of Rs.15,500/-. For

discharge of such loan amount, the accused 3 and 4 have issued six cheques each to the tune of Rs.15,500/-. When the respondent/complainant presented the cheques for encashment on 31.08.2002, all the cheques were returned on 03.09.2002 with an endorsement 'exceeds arrangement'. The complainant/ respondent thereafter issued a statutory notice on 12.09.2002 calling upon the accused 1 to 4 to pay the cheque amount. Thereafter, the complaint was filed before the trial Court. After trial, the trial Court convicted the accused 1 to 4 for the offence under Section 138 of The Negotiable Instruments Act and sentenced them to undergo simple imprisonment for a period of six months each and to pay a compensation of Rs.93,000/- within a period of two months, in default, to undergo simple imprisonment for a period of two months. Assailing the judgment of the trial court, the accused 1 to 4 have filed Criminal Appeal No. 411 of 2008. The appellate Court, while acquitting the accused 1 and 2, found the accused 3 and 4/revision petitioners herein guilty of the offence punishable under Section 138 of The Negotiable Instruments Act and sentenced them to undergo simple imprisonment for a period of three months each and to pay a sum of Rs.60,000/- to the complainant within two months. It is as against the judgment of the Appellate Court, the accused 3 and 4 have come up with this Criminal Revision Case before this Court.

3. When the Criminal Revision Case is taken up for hearing, the learned counsel appearing for the accused 3 and 4/revision petitioners would contend that he is confining his argument only with respect to reduction of sentence and not on merits. According to the counsel for the petitioners, the major portion of the cheque amount has been paid by the petitioners, but it was not properly appreciated by the Appellate Court. Even though the courts below recorded that substantial payment has been made by the petitioners, yet, the appellate Court convicted the revision petitioners erroneously. However, the learned counsel for the petitioners would contend that the petitioners are prepared to pay some amount towards compensation to the complainant/respondent and on such payment, the sentence imposed against them shall be modified.

4. Even though notice was ordered to the respondent, there is no representation on their behalf. The criminal revision case is pending since 2009 and no useful purpose will be served by keeping the case pending any further.

5. It is seen from the Judgment of the appellate Court that the appellate Court has recorded the deposition of DW2 to the effect that he has paid the major amount covered under the cheques and only a meagre amount has to be paid by them. Even the complainant, PW1, in the deposition, has admitted that a portion of the cheque amount has been received from the accused during the pendency of the case. However, the appellate Court found that the accused have not produced any evidence to prove the payments so far made by them. In other words, there is no evidence on record to show what was the payment

made by the accused and what remains to be paid by them.

6. Having regard to the above facts and the submission of the counsel for the petitioners that the petitioners are prepared to pay some amount towards compensation to the complainant/respondent, this Court is of the view that such a submission made on behalf of the petitioners has to be accepted and no useful purpose will be served in sentencing the revision petitioners to jail at this point of time. Accordingly, while confirming the conviction imposed on the petitioners for the offence under Section 138 of The Negotiable Instruments Act, the Judgment of the Appellate Court is modified with respect to sentence alone in to one of payment of compensation. The revision petitioners are directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) towards compensation to the respondent, either directly or depositing the amount to the credit of C.C. No. 11000 of 2002 dated 09.11.2005 on the file of XIV Metropolitan Magistrate, Egmore, Chennai, within a period of three months from the date of receipt of a copy of this order. In default, the Judgment passed by the Appellate Court shall stand restored. In such event, the trial Court shall take necessary steps as are necessary to secure the presence of the revision petitioners to undergo the period of sentence imposed by the Appellate Court.

7. The Criminal Revision Case is partly allowed, as indicated above.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

1. The IV Additional Sessions Judge
City Civil Court, Chennai.
2. Thro principal Sessions Judge,
City Civil Court, Chennai.
3. The XIV Metropolitan Magistrate
Egmore, Chennai.
4. -Do-Thro the Chief Metropolitan Magistrate,
Egmore, Chennai.

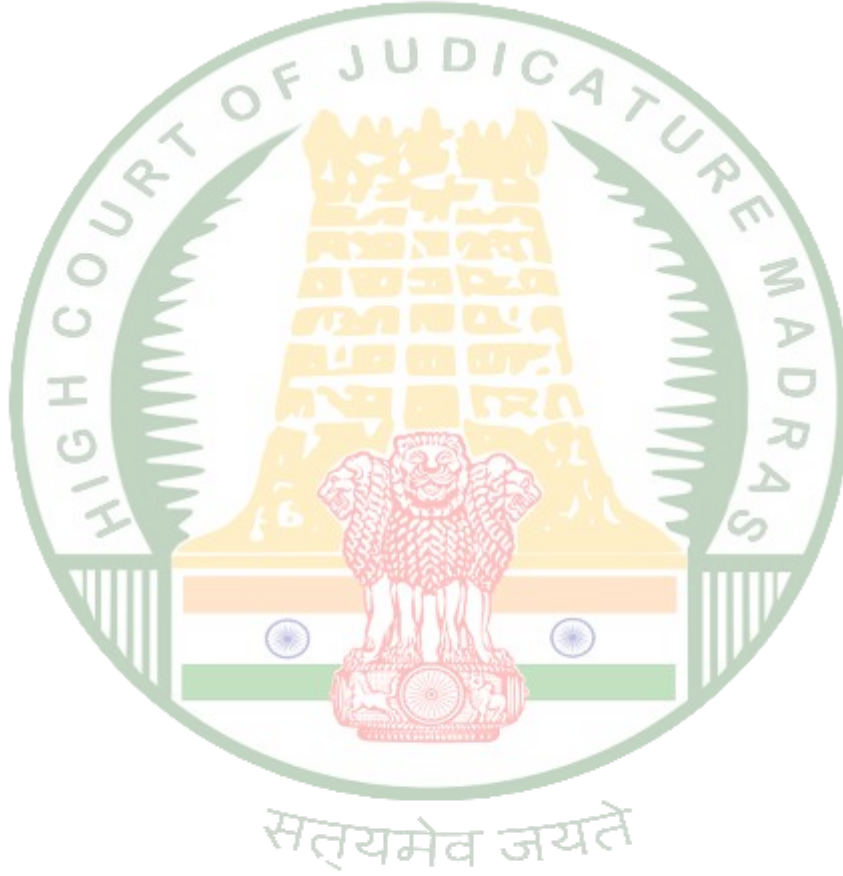
Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.M.Rajasekhar, Advocate Sr.44355

CrI.R.C. No. 208 of 2009

ak[co]
srg 6.10.2015



WEB COPY