

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 258 of 2009

D. Dhanapal

.. Petitioner/Appellant

Versus

A. Moulana

.. Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure against the order dated 16.02.2008 passed in Criminal Appeal No. 450 of 2007 on the file of District and Sessions Judge, Fast Track Court No.1, Coimbatore confirming the Judgment dated 21.09.2007 passed in S.T.C. No. 2158 of 2006 on the file of Judicial Magistrate No.1, Coimbatore.

For Petitioner : Mr. H. Rajasekar

For Respondent : No appearance

ORDER

The respondent herein has filed S.T.C. No. 2158 of 2006 before the learned Judicial Magistrate No.1, Coimbatore under Section 138 of The Negotiable Instruments Act contending that on 03.04.2006, the petitioner herein has borrowed a sum of Rs.2,90,000/- from him with an assurance to repay the said amount with interest on or before 24.04.2006. On borrowal of the amount, the petitioner has issued a cheque drawn on Indian Overseas Bank in favour of the respondent. When the cheque was presented for payment, it was returned with a memo dated 25.07.2007 indicating 'insufficient funds' in the account of the petitioner to honour the cheque. Therefore, on 28.04.2006, a statutory notice was sent by the respondent, Ex.P3 which was received by the petitioner on 02.05.2006. Even after receipt of the notice, the petitioner has neither sent a reply nor repaid the cheque amount. Therefore, the respondent has filed the aforesaid complaint under Section 138 of The Negotiable Instruments Act.

2. The trial Court, on appreciation of the oral and documentary evidence, held that the petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. Accordingly, the trial Court convicted the petitioner for the offence under Section 138 of The Negotiable Instruments Act and sentenced him to undergo simple imprisonment of four months with fine of Rs.1,000/-

failing which to undergo one month simple imprisonment. The appeal filed by the petitioner against the order of the trial court was dismissed, hence, this Criminal Revision Case.

3. The learned counsel for the petitioner did not argue the case on merits, but confined his arguments for reduction of sentence. The learned counsel for the petitioner would submit that the petitioner is willing to pay the cheque amount if some time is granted. It is also submitted that the petitioner repents for his misdeeds and therefore he prayed this Court to show some leniency in the matter of reduction of sentence imposed on the petitioner by the courts below.

4. Even though notice was sent to the respondent/complainant, there is no representation made on his behalf.

5. Having regard to the submission of the counsel for the petitioner that the petitioner is willing to pay the cheque amount, this Court is of the view that no useful purpose will be served if the petitioner is sent to jail instead of directing him to pay the cheque amount to the respondent. In such circumstance, this Court is of the view that the sentence imposed on the petitioner shall be modified in to one of payment of cheque amount to the respondent.

5. Accordingly, while confirming the conviction imposed on the petitioner by the courts below for the offence under Section 138 of The Negotiable Instruments Act, the sentence alone is modified in to one of payment of cheque amount by the petitioner. The petitioner is directed to deposit the cheque amount of Rs.2,90,000/- before the trial Court to the credit of S.T.C. No. 2158 of 2006 or to pay the amount directly to the respondent within a period of three months from the date of receipt of a copy of this order failing which the order passed by the courts below shall stand restored. In such event, the trial Court shall take steps, as are necessary, to secure the presence of the petitioner to undergo the period of sentence.

7. The Criminal Revision Case is partly allowed to the extent indicated above.

rsh

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The District and Sessions Judge
Fast Track Court No.1
Coimbatore

2. The Judicial Magistrate No.1
Coimbatore.

+ 1 cc to Mr.H.Rajasekar, Advocate SR 44131

vgi(co)
prk13/10

CrI.R.C. No. 258 of 2009



WEB COPY