

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.259 of 2009

C.Balachandar

... Petitioner/Appellant/Accused

Versus

A.Krishnan

... Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.174 of 2007 on the file of the learned Additional Sessions Judge-cum-Fast Track Court No.2, Salem, and set aside the order dated 22.05.2008 confirming the conviction and the sentence passed in C.C.No.185 of 2006 on the file of the learned Judicial Magistrate No.III, Salem dated 30.10.2007.

For Petitioner : Mr.T.Gowthaman

For Respondent : Mr.A.R.Suresh

ORDER

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

2. The revision has been filed by the petitioner against the Judgment dated 22.06.2008 passed in Crl.A. No. 174 of 2007 on the file of the Additional Sessions Judge-cum-Fast Track Court No.II, Salem, confirming the Judgment dated 30.10.2007 passed in C.C.No.185 of 2006 on the file of the learned Judicial Magistrate No.3, Salem.

3. The case of the complainant, that the accused in his financial transaction with the complainant, borrowed a sum of Rs.15,171/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 07.03.2006. 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 16.03.2006. 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 C.C. No. 185 of 2006 on the file of the learned Judicial Magistrate-III, Salem. 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 three months simple imprisonment and to pay a fine of Rs.3,000/- on the accused and to pay compensation of Rs.15,171/-. Aggrieved by the same, the accused has filed CrI.A. No.174 of 2007 before the learned Additional Sessions Judge-cum-Fast Track Court No.2, Salem and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, the petitioner has preferred the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submits that the courts below have not taken into consideration that a sum of Rs.3,000/- has been paid on 20.10.2005 and the receipt is also marked as Ex.D2. Hence, submits that both the courts below have not properly adduced the evidence and came to the wrong conclusion which is erroneous.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioner has not chosen to sent any reply notice for the statutory notice issued on 16.03.2006. This aspect has been duly considered by both the courts below. However, learned counsel for the respondent fairly admits the receipt of Ex.D2 and also states that the accused and the complainant are known each other in the business.

6. After some elaborate arguments, the learned counsel for the petitioner agreed to pay the entire cheque amount less the amount already paid by him and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. Learned counsel for the respondent has no serious objection for the submission made by the learned counsel for the petitioner.

7. I have perused the materials available on record.

8. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo three months Simple Imprisonment and to pay compensation of Rs.15,171/-.

9. 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.

10. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that out of the cheque amount he has already paid Rs.3,000/- and also the fact that the petitioner is willing to settle the amount in question, I am of the view that instead of sending the petitioner to jail, in the interest of justice, he may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentence is modified to that of payment of compensation to the tune of Rs.12,171/- (Rupees Twelve Thousand One Hundred Seventy One only). Since the petitioner had already paid Rs.3,000/- now the petitioner is directed to pay an amount of Rs.12,171/- to the complainant, within a period of three 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.

11. With the above direction and modification, the Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

smi

To

1. The Additional Sessions Judge-cum-Fast Track Court No.2, Salem.
2. The Judicial Magistrate No.III, Salem.

+1cc to M/s.t.Gowthaman, Advocate, S.R.No.44155
+1cc to M/s.A.R.Suresh, Advocate, S.R.No.44301

CRL.RC.No.259 of 2009

ALA (CO)
CA(25/09/2015)