

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No.420 of 2009

K.P.Balachander @ Balu

.. Petitioner/Accused

Versus

J.Uttam Kumar Baid

.. Respondent/Complainant

Criminal Revision Case has been filed under Section 397 read with 401 of the Criminal Procedure Code, against the Judgment dated 15.04.2009 passed in Crl.A.No.134 of 2008 on the file of the Additional District & Sessions Judge (Fast Track Court No.V) Coimbatore at Tiruppur, confirming the order dated 09.04.2008 passed in S.T.C.No.1291 of 2007 on the file of the learned Judicial Magistrate No.I, Tiruppur.

For Petitioner : Mr. M.N.Balakrishnan

ORDER

The case of the respondent/complainant is that the petitioner/accused has borrowed a sum of Rs.11,98,025/- from the complainant and he has agreed to repay the same. When the complainant demanded for repayment, the accused gave four cheques in favour of the complainant, dated 04.01.2007. When the alleged cheques were presented for collection, the same were returned with an endorsement "Funds Insufficient". Pursuant to which, the complainant issued statutory notice. Since, the accused has not come forward to pay the cheque amount, a complaint was lodged and the same was taken on file in S.T.C. No. 1291 of 2007 on the file of the Judicial Magistrate No.I, Tiruppur. After trial, the Trial Court convicted the petitioner/accused under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for two years and to pay a compensation of Rs.12,00,000/-. As against the judgment of conviction and sentence imposed on the petitioner, he has filed Crl.A. No.134 of 2008 before the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore at Tiruppur which was dismissed on 15.04.2009 thereby, confirming the judgment passed by the Trial Court. Aggrieved against the same, this Criminal Revision Case is filed.

2. Today, when the revision is taken up, Mr.M.N.Balakrishnan, learned counsel appearing for the petitioner/accused would submit that earlier, the cheques which were issued as security for business purposes had been misused by the complainant. He would also contend that the Court below has not taken into consideration the petition filed under Section 91 of Cr.P.C. seeking a direction to direct the complainant to produce the income tax returns in order to prove his claim. Without assigning reason, the Court below has simply dismissed the said C.M.P.No.42 of 2008. However, he would further add that the petitioner is now not arguing the matter on merit, but, confining his argument only on the question of sentence imposed on the petitioner/accused by the Appellate Court. He would further submit that the petitioner is willing to deposit the cheque amount, but, due to the fact that he is facing financial crunch in his business, he needs some time and hence, he prayed for showing leniency in reduction of sentence.

3. Though notice has been duly served on the respondent, none have chosen to appear before this Court. In view of judgment of the Hon'ble Apex reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka and in the light of the principles culled out in the said judgment this Criminal Revision case is decided on merits.

4. I have perused the materials on record.

5. Taking into consideration of the fact that the learned counsel appearing for the petitioner is not arguing the matter on merit but he is confining his argument only on the question of sentence imposed on the petitioner by the Appellate Court and prayed for showing leniency in reduction of sentence, I am of the view that some leniency can be shown to the petitioner/accused into one of the payment of the entire compensation amount as awarded by the court below i.e., a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) and in addition to that since the cheque was issued in the year 2007, the petitioner/accused is directed to pay a further sum of Rs.6,00,000/- and in all, a total compensation of Rs.18,00,000/- (Rupees Eighteen Lakhs only) is directed to be paid by the petitioner/accused. The same shall be deposited to the credit of S.T.C. No.1291 of 2007 before the Judicial Magistrate-1, Tiruppur, within a period of four months from the date of receipt of a copy of this order, failing which, the judgment passed by the Appellate Court shall stand revived and the respondent/complainant is at liberty to approach the Trial Court, which shall take steps to secure the accused to undergo the remaining period of sentence. On such deposit being made, the complainant is permitted to withdraw the same from the Trial Court by filing an appropriate application before the Trial Court.

6. With the above modification in sentence, the Criminal Revision Case is partly allowed.

smi

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Additional District & Sessions Judge
(Fast Track Court No.V) Coimbatore at Tiruppur

2.The Judicial Magistrate No.I, Tiruppur.

+ 1 cc to Mr.M.N.Balakrishnan, Advocate SR 45470

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