

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 428 of 2009

P.Eswaramoorthy

.. Petitioner/Accused

Versus

A. Murugesan

... Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the Judgment dated 31.03.2009 made in Criminal Appeal No.305 of 2008 on the file of the learned First Additional Sessions Judge, Erode, confirming the order dated 04.11.2008 made in C.C. No. 743 of 2007 on the file of the Judicial Magistrate No.1. Erode.

For Petitioner : No Appearance
For Respondent : Mr.C.S.Saravnan

ORDER

The case of the respondent/complainant is that on 03.10.2007, the petitioner/accused borrowed a sum of Rs.2,00,000/- and had paid Rs.18,000/-towards interest for four months. On 03.10.2007, when the complainant approached the accused, the accused alleged to have given a cheque for a sum of Rs.2,00,000/-. When the complainant presented the cheque for collection on 03.10.2007, the same returned with an endorsement "Stop Payment made by the Drawer". Hence, the complainant issued a legal notice on 11.10.2007 which was returned as unserved on 12.10.2007. Since, the accused did not come forward to pay the money, a complaint was given. The case was taken on file in C.C.No.743 of 2007 on the file of the Judicial Magistrate No.I, Erode. After trial, the accused was convicted by the learned Judicial Magistrate No.II, Pollachi, for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for one month. The judgment of conviction and sentence imposed on the petitioner/accused was also affirmed by the learned I Additional Sessions Judge, Erode, on 31.03.2009 in CrI.A. No. 305 of 2008. Aggrieved against the same, the petitioner/accused has come forward with the present Criminal

Revision Case

2. When this Court had taken up the matter on 31.07.2014, learned counsel appearing for the petitioner reports no instructions. Hence, notice was ordered to be served on the petitioner through the jurisdictional police. But till date, the notice is not able to be served on the petitioner. Since the matter has been kept pending from 2009, there is no use in sending fresh notice and hence, after hearing the learned counsel for the respondent and as per the decision rendered by the Hon'ble Apex in the judgment reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, this Court has decided the matter on merits.

3. The only ground which has been raised by the petitioner is that without giving sufficient opportunity to the petitioner the court below has summarily rejected the petition filed under Section 311 Cr.P.C. for recalling the evidence of P.W.1 for cross examination which is erroneous.

4. Learned counsel appearing for the respondent would contend that even though the applicant was granted time, he has not chosen to appear on that day for cross examination. Hence, the court below had rightly rejected the petition filed under Section 311 Cr.P.C. thereafter. Therefore, there is no error or infirmity in the order passed by the court below and prays for dismissal of the revision. However, he would submit that as the cheque is of the year 2007 if the petitioner/accused is directed to pay the cheque amount and some amount as compensation and there is no point in sending him to jail.

5. On a careful perusal of the order I could find that the averment made in the ground by the petitioner/accused that he was not given an opportunity is not correct. The petitioner though filed the petition under Section 311 Cr.P.C. has not appeared before the court below on the date of hearing. Simply filing of petition alone is not sufficient for cross examination. Hence, the court below had rightly rejected the petition filed since there was no appearance on the part of the petitioner. However, in view of the submission made by the learned counsel for the respondent, I am of the view that instead of sending the petitioner/accused to jail, he may be directed to pay some amount as compensation. Hence, while confirming the conviction imposed by the Appellate Court, the sentence alone is modified to the effect directing the petitioner/accused to deposit a consolidated sum of Rs.3,00,000/- as compensation, instead of the imprisonment awarded by the Appellate Court. The said amount of Rs.3,00,000/- (Rupees Three Lakhs only) has to be deposited by the petitioner/accused to the credit of C.C. No. 743 of 2007 on the file of the learned Judicial Magistrate No.1. Erode, within a period of two 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, this Criminal Revision Case is partly allowed.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The First Additional Sessions Judge, Erode.

2.The Judicial Magistrate No.1. Erode.

3. Do thro Pri session Judege, Erode.

4. Do thro Chief Judicial Magistrate Erode.

+1 cc to Mr.C.Prakaran, Advocate (sr.45807)

+1 cc to Mr.C.S.Saravanan, Advocate (sr.45598)

Crl.R.C. No. 428 of 2009

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cp 08/10/2015

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