

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl.R.C.No.435 of 2009

S.P.Navaneethakrishnan

.. Petitioner

Vs.

G.Kalidoss

.. Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Code of Criminal Procedure, against the order dated 29.01.2009 made in C.A.No.171 of 2008 on the file of the First Additional District Sessions Court, Coimbatore modifying the order dated 27.05.2008 made in S.T.C.No.4004 of 2006 on the file of the Judicial Magistrate No.7, Coimbatore.

For Petitioner : Mr.S.Peer Mohamed

For Respondent : Mr.Venkateswaran

O R D E R

Being aggrieved by the order passed in C.A.No.171 of 2008 on the file of the learned I Additional District Sessions Judge, Coimbatore, modifying the order dated 27.05.2008 made in S.T.C.No.4004 of 2006 on the file of the Judicial Magistrate VII, Coimbatore, this revision case is filed.

2. The respondent preferred a complaint alleging that the petitioner had borrowed a sum of Rs.2,00,000/- from him and had undertaken to repay the same within six months. Later, the petitioner had issued a cheque bearing No.867360 dated 17.04.2006 drawn on Vijaya Bank, Saibaba Colony Branch. When the respondent presented the cheque for payment, the same was returned unpaid for the reason 'Account Closed'. Thereafter, the respondent sent a legal notice dated 28.04.2006 to the petitioner. A reply was also given by the petitioner, however, he failed to repay the amount. Hence, the respondent preferred a complaint against the petitioner under section 138 of the Negotiable Instruments Act and the same was taken on file in S.T.C.No.4004 of 2006 on the file of the learned Judicial Magistrate VII, Coimbatore.

3. Before the trial Court, on the side of the respondent/complainant, he examined himself and marked six exhibits. One witness was examined on behalf of the petitioner/accused and one document was marked. On appreciation of materials before it, the trial Court, under judgment dated 27.05.2008, convicted the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentenced him to undergo 1 year

simple imprisonment. There against, the petitioner preferred an appeal in C.A.No.171 of 2008 on the file of the learned I Additional District Sessions Judge, Coimbatore. The appellate Court, under judgment dated 29.01.2009, modified the sentence of one year simple imprisonment to one of compensation of Rs.2,25,000/- in default to undergo 6 months simple imprisonment. Challenging the said judgment, the present revision has been filed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The learned counsel for the petitioner submitted that the parties now have settled the matter among themselves and the respondent has agreed to receive a sum of Rs.1,00,000/- in full quit. Pursuant to the said settlement, the petitioner has paid a sum of Rs.50,000/- to the respondent and the same was also acknowledged by the learned counsel for the respondent, which was recorded by this Court in its order dated 17.12.2014. The petitioner has to pay only the balance sum of Rs.50,000/- and he requires four weeks time to effect such payment. Learned counsel further submitted that in the event of the petitioner effecting the balance payment, the sentence imposed on the petitioner may be modified.

6. The learned counsel for the respondent affirms the submission of the learned counsel for the petitioner and he has no objection to grant four weeks time to effect payment and to modify the sentence in the event of effecting the balance payment.

7. Considering the submissions made on either side, this Court orders as follows:

- (i) the petitioner is directed to deposit the balance sum of Rs.50,000/- in the Court or to pay directly to the respondent within a period of four weeks from the date of receipt of a copy of this order.
- (ii) In the event of the petitioner effecting payment of the balance sum of Rs.50,000/-, the sentence imposed on the petitioner by the appellate Court shall stand set aside;
- (iii) In the event of failure on the part of the petitioner to effect payment within four weeks, the judgment of the appellate Court order shall stand confirmed.

This Criminal Revision shall stand disposed of with the above direction.

Sd/-

Asst.Registrar (CS II)

/true copy/

To

1. The I Additional District and Sessions Court-cum-Fast Track Court No.III, Coimbatore.
2. -Do- Thro The Principal Sessions Judge, Coimbatore.
3. The Judicial Magistrate VII, Coimbatore.
4. -Do- Thro The Chief Judicial Magistrate, Coimbatore.

+1cc to Mr.K.Venkateswaran, Advocate sr.no.35370
+1cc to Mr.PeerMohamad, Advocate sr.no.35909

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