

BAIL SLIP

Petitioner was directed to be released on bail as per order of this Court dt.9.7.09 in MP.1/09 in Crl.RC.No.462/09.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.6.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.462 OF 2009

K.Chandran ... Petitioner/Appellant/Accused

Versus

A.Mahalingam ... Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to all for the records comprised in Criminal Appeal No.125 of 2008 on the file of the first Additional Sessions Judge at Erode dated 01.12.2008 in confirming the judgment made in C.C.No.164 of 2006 on the file of the District Munsif - cum Judicial Magistrate, Kodumudi dated 17.4.2008.

For Petitioner : Mr.V.Balamurugane

ORDER

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

2. The revision has been filed by the petitioner accused against the Judgment dated 01.12.2008 passed in Crl.A. No. 125 of 2008 on the file of the First Additional Sessions Judge, Erode, confirming the Judgment dated 17.4.2008 passed in C.C. No.164 of 2006 on the file of the learned District Munsif - cum - Judicial Magistrate, Kodumudi.

3. The case of the complainant is that the accused in his financial transaction with the complainant, borrowed a sum of Rs.1,00,000/- on 07.7.2006 from him. To discharge the above said debt, the accused issued a cheque for the said amount dated 08.8.2006. 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. 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. 164 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- and in

default to undergo Simple imprisonment for a period of three months. Aggrieved by the same, the accused has filed CrI.A. No.125 of 2008 before the learned First Additional Sessions Judge, Erode 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 filed the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused did not argue on merits but confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submitted that the cheque was given to some other financier as security and the same was misused by the complainant. However, now the petitioner is willing to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for showing leniency against the petitioner.

5. Though notice was ordered on the respondent / complainant, the same was not served so far. Since the matter is kept pending from the year 2009, the same is taken up for disposal on merits.

6. I have perused the materials available on record.

7. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of three months.

8. 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. Though it is the submission of the learned counsel for the petitioner that the cheque in question has been issued to some other financier as security, he has not chosen to examine the said financier. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 139 of the Negotiable Instruments Act.

9. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence 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.1,75,000/- (Rupees One Lakh Seventy Five Thousand only). The petitioner is directed to pay the amount of Rs.1,75,000/- to the complainant within a period of four 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.

With the above direction and modification, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

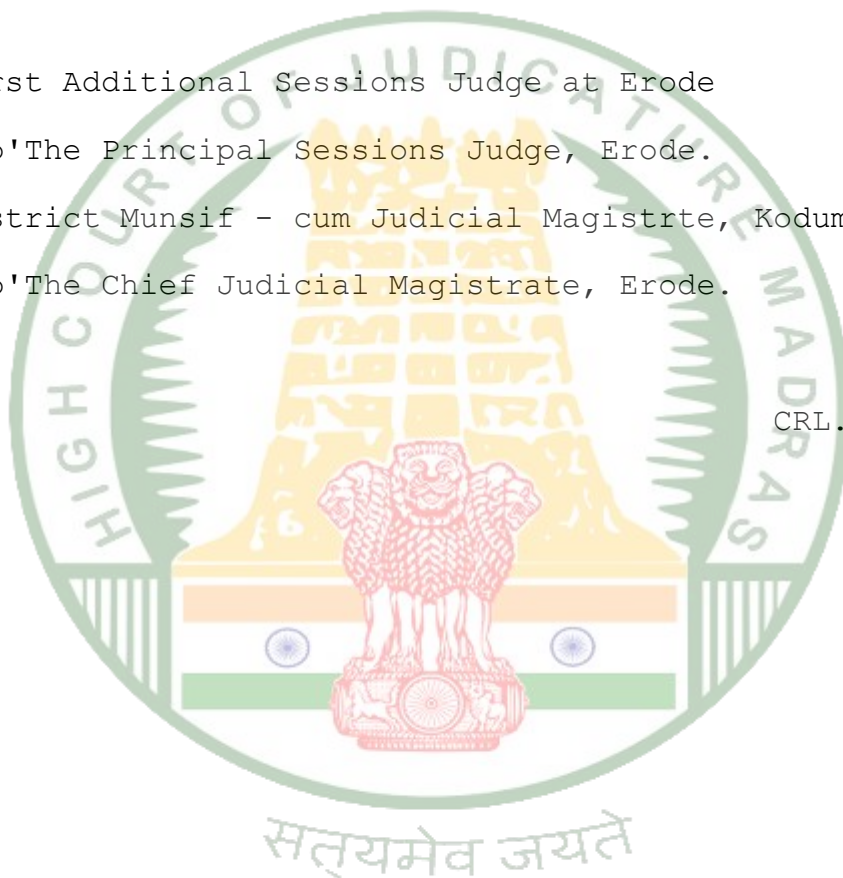
Sub Assistant Registrar

To

1. The first Additional Sessions Judge at Erode
2. do thro' The Principal Sessions Judge, Erode.
3. The District Munsif - cum Judicial Magistrate, Kodumudi.
4. do thro' The Chief Judicial Magistrate, Erode.

Rv (co)
krd 10/7

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