

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 471 of 2009

Easwaran

...Petitioner/Accused

Versus

P.Ganesan

...Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the Judgment dated 13.04.2009 passed in Crl.A.No. 280 of 2008 on the file of the Ist Additional Sessions Judge, Erode, confirming the judgment of conviction and sentence dated 10.10.2008 passed in C.C. No.11 of 2004 on the file of the learned Judicial Magistrate-III, Erode.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.I.C.Vasudevan

ORDER

The case of the respondent/complainant is that the petitioner/accused has borrowed a sum of Rs.1,00,000/- as hand loan from the complainant and he has agreed to repay the same. When the complainant demanded for repayment, the accused gave a cheque in favour of the complainant, dated 04.11.2003. When the alleged cheque was presented for collection, the same were returned with an endorsement "Funds Insufficient". Pursuant to which, the complainant issued statutory notice on 25.11.2003. Since, the accused has not come forward to pay the cheque amount, a complaint was lodged and the same was taken on file in C.C. No. 11 of 2004 on the file of the Judicial Magistrate-III, Erode. After trial, the Trial Court convicted the petitioner/accused under Section 138 r/w 142 of the Negotiable Instruments Act and

sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- in default to undergo Simple Imprisonment for two months. As against the judgment of conviction and sentence imposed on the petitioner, he has filed Crl.A. No.280 of 2008 before the learned Ist Additional Sessions Judge, Erode, which was dismissed on 13.04.2009 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.R.Marudhachalamurthy, learned counsel appearing for the petitioner/accused would submit that earlier, the cheque which was issued to one Mohan, LIC agent had been misused by the complainant. 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. Mr.I.C.Vasudevan, learned counsel appearing for the respondent would contend that only after analysing the entire evidences available on record, the court below had rightly convicted the accused and hence, 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 2003 and 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.

4. Heard both sides.

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 compensation. Accordingly, the petitioner/accused is directed to pay a sum of Rs.1,00,000/- as (Rupees One Lakh only) to the complainant/respondent. The same shall be deposited to the credit of C.C. No.11 of 2004 on the file of the learned Judicial Magistrate-III, Erode, within a period of

three 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.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Ist Additional Sessions Judge,
Erode.

2.The Judicial Magistrate-III,
Erode.

3.The Chief Judicial Magistrate III,
Erode.

4.The Public Prosecutor,
High Court, Madras.

1 CC to Mr.I.C.Vasudevfa, Advocate SR.No.

1 CC to Mr.I.C.Vasudevan, Advocate SR.No.

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NM (CO)
PSI (26.10.2015)