

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN
CRL. RC. No.487 of 2009

1. M/s. Neelamalalai Chits P. Ltd.
rep. by its Managing Director
Mr.R.Nanjan

2.R.Nanjan
Managing Director

.. Petitioner/Accused 1 & 2

Versus

Selvakumar

.. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.7 of 2009 on the file of the learned District & Sessions Judge, Nilgiris at Uthagamandalam, and set aside the order dated 30.04.2009, confirming the conviction and the sentence passed in S.T.R.No.4603 of 2000, on the file of the learned Judicial Magistrate, Coonoor, dated 03.02.2009.

For Petitioner : Mr.B.Jayaraman

For Respondent : Mr.R.Subramanian

ORDER

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

2. The revision has been filed by the petitioner against the Judgment dated 30.04.2009, passed in Crl.A. No.7 of 2009 on the file of the learned District & Sessions Judge, Nilgiris at Uthagamandalam, confirming the conviction and sentence dated 03.02.2009 passed in S.T.R.No.4603 of 2000 on the file of the learned Judicial Magistrate, Coonoor .

3. The case of the complainant, the accused in his financial transaction with the complainant, borrowed a sum of Rs.2,87,500/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 10.07.2009. 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 on 17.07.2000. 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 S.T.R.No. 4603 of 2000 on the file of the learned Judicial Magistrate, Coonoor. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and since the first accused is an company the second accused shall undergo simple imprisonment for one year and to pay compensation of Rs.2,87,500/-. Aggrieved by the same, the accused have filed Crl.A. No.7 of 2009 before the learned District & Sessions Judge, Nilgiris at Uthagamandalam 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 preferred 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 submits that the accused had no intention to cheat the complainant. Both the courts below have not properly adduced the evidence and came to the wrong conclusion which is erroneous.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioner has not chosen to send any reply notice for the statutory notice issued on 17.07.2000. This aspect has been duly considered by both the courts below. Hence, there is no error of infirmity in the order passed by both the Courts below and prays for dismissal of the revision.

6. After some elaborate arguments, the learned counsel for the petitioner agreed to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. He also brought to the notice of this Court that 50% of the cheque amount had already been deposited as per the order of this Court dated 03.06.2009.

7. I have perused the materials available on record.

8. The trial court convicted the petitioners/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to

pay compensation of Rs.2,87,500/-.

9. 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 misused, he has not established the same. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

10. 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 had already deposited 50% of the cheque amount and is also willing to settle the amount in question, I am of the view that instead of convicting the accused, in the interest of justice, they may be directed to pay some amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentenced is modified to that of payment of compensation. I am of the view that the chque in question was issued in the year 2009 and hence, the petitioner is directed to pay the cheque amount and also 50% of the cheque amount as compensation. As the petitioner had already deposited 50% of the cheque amount, now, the petitioner is directed to pay the amount of Rs.2,87,500/- to the complainant, within a period of three 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, the conviction and sentence imposed by the Courts below will hold good and this order will not enure to the benefit of the accused.

11. With the above direction and modification, the Criminal Revision Case is partly allowed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The District & Sessions Judge, Nilgiris at Uthagamandalam

2. The Judicial Magistrate,
Coonoor.

3.-Do-Thro Chief Judicial Magistrate,
Nilgiris at Uthagamandalam.

+1cc to Mr.R.Subramanian, Advocate Sr.45774

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