

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.810 of 2009

and

M.P.Nos.1 to 3 of 2009

V.Ramani

... Petitioner/Accused

Versus

M.Annadurai

... Respondent/Complainant

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 13.07.2009 passed by the learned Principal District and Sessions Judge, Villupuram in C.A.No.8 of 2009 in confirming the conviction and sentence passed by the learned II Additional District Munsif, Ulundurpet in C.C.No.18 of 2006 dated 27.04.2007.

For Petitioner : No appearance

For Respondent : No appearance

ORDER

Though the case has been listed on Saturday itself, i.e., [29.08.2015] mentioning that this case will be listed under the caption "old year cases" on Wednesday, i.e., on 02.09.2015, when the matter is taken up today, there is no representation on either side and on a perusal of the docket sheet, it is seen that the petitioner has not appeared before this Court right from the date of filing this case and the same is pending without even serving notice on the other side, for the past six years. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

2. The petitioner is the sole accused in C.C.No.18 of 2006 on the file of the learned II Additional District Munsif, Ulundurpet and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of

Rs.5,000/-, in default, to undergo simple imprisonment for another six months. As against the conviction and sentence imposed, the petitioner filed Crl. Appeal No.8 of 2009 and the first appellate Court by judgment dated 13.07.2009 confirmed the same. Aggrieved by the same, the present Criminal Revision Case is filed.

3. The case of the complainant in brief is as follows:

The petitioner/accused borrowed a sum of Rs.1,86,000/- on three different dates to meet out his family expenses from the respondent/complainant and in order to discharge the legally enforceable debt, issued three different cheques as follows:

Sl.No.	Cheque No.	Bank Name	Amount
1.	124985	IOB, Kalamarudur Branch	Rs.75,000/-
2.	977806	IOB, Ulundurpet Branch	Rs.75,000/-
3.	403857	IOB, Aladi Branch	Rs.36,000/-

However, when the aforesaid cheques were presented for payment, the same was returned with the endorsement "Insufficient funds". Hence, the complaint.

4. The only ground raised by the accused in this revision is that both the Courts below failed to take into consideration the fact that the legal notice was sent to the petitioner only on 25.06.2004; however without even waiting for the reply notice, the complaint has been preferred on the same day. Further, he would contend that no filing date was mentioned in the complaint. Accordingly, he would pray for setting aside the conviction and sentence ordered by the Courts below.

5. Perused the records.

6. On a careful consideration of the judgments passed by both the Courts below, it is seen that the Courts below after analysing the entire oral and documentary evidence adduced, have convicted the petitioner/accused. The trial Court has stated that two cheques issued by the petitioner was returned for the reason "insufficient funds" and one other cheque was returned on the ground that "stop instruction" has been given by the drawee, which were proved by way of Exs.P1 to P3. Hence, the trial Court held that the complainant has proved the guilt beyond reasonable doubt. Moreover, it has also held that when the complainant put a question to the accused, viz., that since he was working as a Manager in the Indian Overseas Bank and that the complainant approached him seeking bank loan and even before the sanction of the loan amount, in good faith, the accused

had given the cheques, viz., Exs.P1 to P3 and since there was a delay in sanction of the loan, the complainant has filed this complaint, would go to show that the accused had issued the cheques in question to the complainant in order to discharge his liability. In view of the above factual finding given by the trial Court, which was affirmed by the first appellate court, I do not find any reason to interfere with the reasoned order passed by the Courts below in convicting the petitioner/accused under Section 138 of the Negotiable Instruments Act.

7. At this juncture, this Court is of the view that the petitioner being a Senior Citizen and that he was a Bank employee, leniency in the matter of awarding sentence by modifying the same into one of payment of double that of the cheque amount as compensation could be considered as more than a decade have elapsed since the issuance of the cheques.

8. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo simple imprisonment for a period of one year is modified into one that of payment of double that of the cheque amount, viz., Rs.1,86,000/- as compensation. Therefore, the petitioner/accused is directed to either pay the sum of Rs.3,72,000/- [Rupees three lakhs and seventy two thousand only], viz., double that of the cheque amount as compensation, directly to the respondent/complainant or deposit the same to the credit of C.C.No.18 of 2006 on the file of the learned II Additional District Munsif, Ulundurpet within a period of eight weeks' from today. In the event of failure to pay the amount ordered now and that too, within the time stipulated by this Court, the petitioner/accused has to undergo simple imprisonment for a period of one year as ordered by the trial court and confirmed by the first appellate court. It is also made clear that if any such payment is made, the Court below is directed to disburse the same to the respondent/complainant on proper identification. However, failure to make the payment, the trial court shall take appropriate steps as are necessary to secure the presence of the petitioner/accused to undergo the sentence of one year simple imprisonment as ordered by the courts below.

9. With the above modification, the Criminal Revision Case is partly allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vj2

To

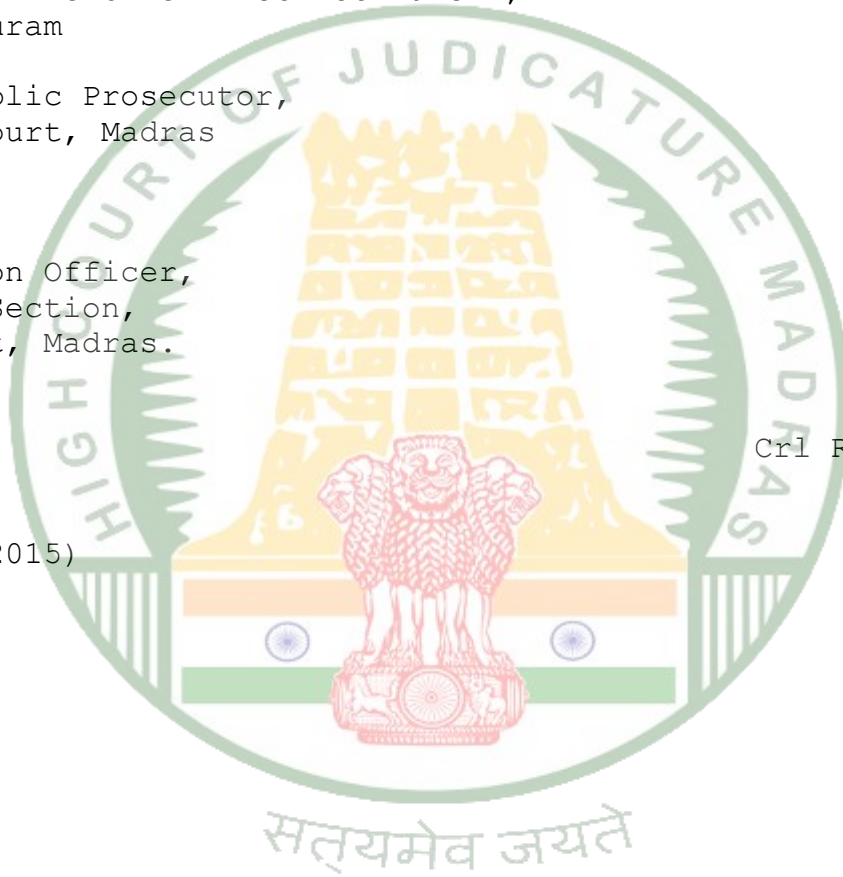
1. The Principal District and Sessions Judge,
Villupuram
2. The II Additional District Munsif,
Ulundurpet
3. Through The Chief District Munsif,
Villupuram
4. The Public Prosecutor,
High Court, Madras

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

AK(CO)
CA(29/09/2015)

Crl RC No.810 of 2009



WEB COPY