

Bail Slip

The appellant / accused in CrI.R.C.No.838 of 2009 viz., Mrs.A.Mercy, W/o. Aasir Packianathan, was directed to be released on bail as per order of this court dated 30.10.2009 made in M.P.No. 1 of 2009 in CrI.R.C.No.838 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.9.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

CrI.Revision Case No.838 of 2009

A.Mercy

...Petitioner

vs

Shanthi

...Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the judgment dated 27.7.2009 made in C.A.No.108 of 2008 by the Hon'ble III Additional Sessions Judge, City Civil Court, Chennai dismissing the appeal and confirming the conviction and sentence passed by the learned XV Metropolitan Magistrate, George Town at Chennai made in his judgment dated 04.12.2007 in C.C.No.690 of 2004.

For Petitioner : Mr.Manoharan S.Sundaram

For Respondent : सत्यमेव जयते No Appearance

ORDER

The present Criminal Revision Case is filed by the petitioner/accused as against the order dated 27.7.2009 passed by the learned III Additional Sessions Judge, City Civil Court, Chennai in dismissing the appeal and confirming the conviction and sentence passed by the learned XV - Metropolitan Magistrate, George Town at Chennai made in his judgment dated 04.12.2007 in C.C.No.690 of 2004.

2. The respondent/complainant preferred a private complaint under Section 138 of Negotiable Instrument Act contending that the petitioner/ accused borrowed a sum of Rs.1,30,000/- for his son's

studies and in order to discharge the above said sum, the accused issued a cheque dated 07.8.2003 for Rs.1,30,000/-. When the said cheque was presented, the same was returned with an endorsement 'insufficient funds'. Hence, the complainant sent a legal notice on 03.11.2003 asking the petitioner/accused to pay the amount. Since the petitioner/ accused has not paid the amount even thereafter, the complainant preferred a complaint under Section 138 of N.I. Act and the same was taken on file by the learned XV Metropolitan Magistrate, George Town, Chennai in C.C.No.690 of 2004. After due trial, by judgment dated 04.12.2007, the learned Magistrate convicted the petitioner/accused under Section 138 of NI Act and sentenced him to undergo two years Simple Imprisonment and to pay compensation of Rs.1,50,000/- to the complainant within three months and in default, to undergo one month simple imprisonment. Against which, the accused preferred a Criminal Appeal No.108 of 2008 and the same was also dismissed by the learned III Additional Sessions Judge, Chennai, by confirming the conviction and sentence passed by the trial Court. Aggrieved by the said judgment, the accused has preferred this Revision.

3. The learned counsel for the revision petitioner/accused would contend that P.W.1 does not disclose the manner in which the loan amount was paid to the petitioner by P.W.1. The learned counsel would further contend that liability has not been proved by the complainant to constitute an offence under Section 138 of the Negotiable Instrument Act. Therefore, the conviction and sentence imposed by the Courts below are not correct.

4. Even though notice was ordered as early as on 30.10.2009, till date, the same has not been served on the respondent. There is no representation on behalf of the respondent. The matter is pending from the year 2009. Hence, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits.

5. Heard the learned counsel for the petitioner and perused the entire materials available on record.

6. On a perusal of the order passed by the Court below, it is seen that the Courts below have categorically found that the original loan amount is Rs.2,30,000/- and the petitioner / accused issued a cheque for a sum of Rs.1,30,000/- on 07.8.2003 towards part payment. The issuance of cheque has been admitted by the petitioner / accused. The complainant also proved the case through P.W.1 to P.W.3 and Exs.P1 to P9. Further, it is clear that though legal notice was

issued by the complainant on 03.11.2003 and the same was acknowledged by the accused on 05.11.2003, the petitioner/ accused has not chosen to reply the same by denying the transaction. In the cross examination of P.W.1, a suggestion was made, wherein P.W.1 has stated that earlier cheque was issued by the petitioner on 07.8.2003 and the same was also dishonoured. The petitioner also admits that the cheque has been issued by him earlier. Therefore, it is clear that the transaction has been proved by the respondent/complainant beyond reasonable doubt. The Courts below after taking into consideration the transaction, have rightly held that the petitioner is liable to pay the cheque amount.

7. When this Court expresses the above opinion, the learned counsel for the petitioner submitted that the petitioner is the only bread winner of the family and he is now willing to pay the entire cheque amount. Therefore, the learned counsel for the petitioner prayed for showing leniency in reduction of sentence.

8. Taking into consideration the above submission, and also considering the fact that the petitioner is willing to settle the amount, I am of the view that instead of sending him jail, 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.2,00,000/- (Rupees Two lakhs only). The petitioner is directed to pay the said amount of Rs.2,00,000/- to the complainant directly or deposit the same to the credit of C.C.No.690 of 2004 on the file of the XV Metropolitan Magistrate, George Town, Chennai, within a period of three months from the date of receipt of a copy of this order. On such deposit being made, the trial Court shall hand over the same to the complainant, on proper identification. It is made clear that if the petitioner fails to pay or deposit the said amount 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 petitioner/ accused.

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

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. III Additional Sessions Judge,
City Civil Court,
Chennai.

2. -Do- Through Principal Sessions Judge,
City Civil Court,
Chennai.

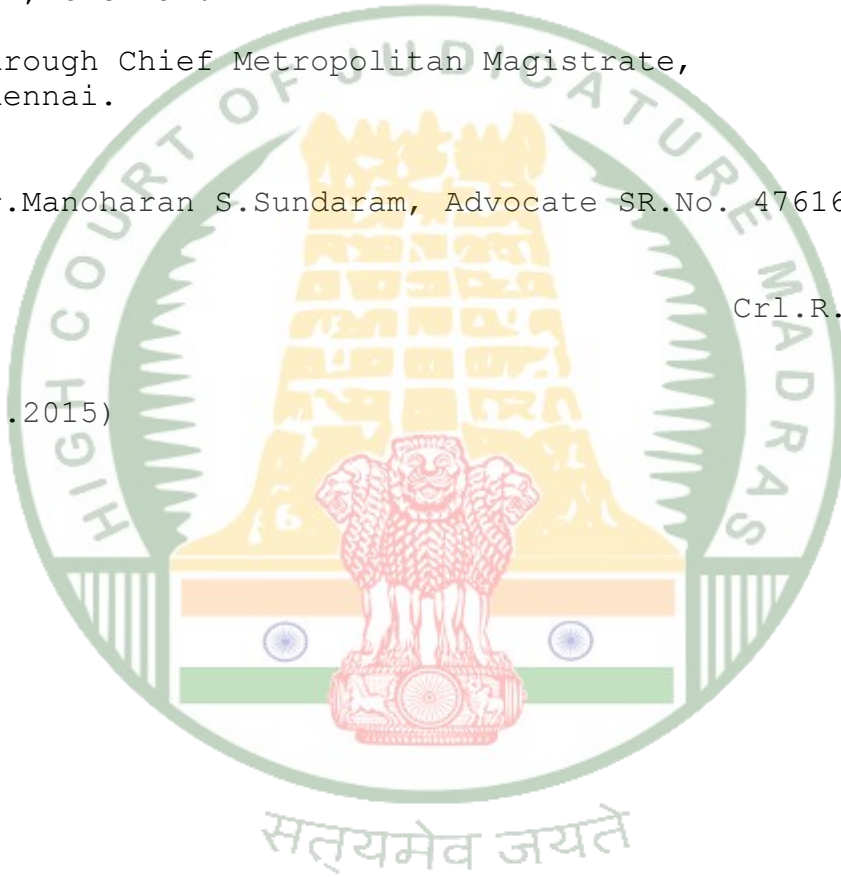
3. XV Metropolitan Magistrate,
George Town, Chennai.

4. -Do- Through Chief Metropolitan Magistrate,
Egmore, Chennai.

1 CC to Mr.Manoharan S.Sundaram, Advocate SR.No. 47616

Crl.R.C.No.838 of 2009

VD (CO)
PSI (07.10.2015)



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