

Bail Slip

The Petitioner in Crl.RC.No.935 of 2009 viz., M/s.Sneha Corporation Prop:Mr.Thomas, was directed to be released on bail as per order of this court dated 19/10/2009 made in MP.NO.1 of 2009 in Crl.RC.No.935 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.935 of 2009

M/s.Sneha Corporation
Prop:Mr.Thomas,
A.2 Shruti Sagar,
Old Police Lane,
Opposite Railway Station,
Sagar Road,
Andheri (E),
Mumbai-400 069.

.. Petitioner

Versus

M/s.Fountain Consumer Appliances Company,
No.B-7, Mugappair (W),
Chennai.

.. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 30.08.2009 passed in Crl.A.No.65 of 2004 by the IV Additional Sessions Judge, City Civil Court, Chennai, confirming the judgment dated 31.12.2003 in C.C.No.4787 of 1999 passed by the XIV Metropolitan Magistrate, Egmore, Chennai-8.

For Petitioner : Mr.K.Rajasekaran

ORDER

The petitioner is the sole accused in C.C. No.4787 of 1999 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai and he has been convicted for an 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 compensation of Rs.6,00,000/- to the respondent. As against the conviction and sentence imposed, the petitioner filed Criminal Appeal No.65 of 2004 on the file of the learned IV Additional District and Sessions Judge, City Civil Court, Chennai and the First Appellate Court by judgment dated 30.08.2009 confirmed the same. Aggrieved over the same, the present Criminal Revision Case came to be filed.

<https://hcservices.ecourts.gov.in/hcservices/>

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

During the course of business transaction, the respondent supplied Hot Vending Machines and Cartridges as per the orders placed by the petitioner herein and raised various invoices for a total sum of Rs.5,92,812/-. In order to discharge the same, the petitioner issued a cheque dated 9.1.99 for a sum of Rs.5,85,602/- in favour of the complainant. However, when it was presented for payment through the respondent's bankers, the same was returned on 21.01.1999, with an endorsement "Funds expected. Please present again." Thereafter, once again, when the said cheque was represented for payment on 29.01.1999, it was returned dishonoured on 4.2.1999. Then, though the respondent/complainant informed the same to the petitioner, no amount was settled. Hence, the private complaint. The same was taken cognizance in C.C.No.4787 of 1999 on the file of the XIV Metropolitan Magistrate, Chennai and after full fledged trial, the trial court, considering the overall facts and circumstances, convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.6,00,000/- to the respondent and the same was confirmed by the learned IV Additional District and Sessions Judge, City Civil Court, Chennai in appeal. Hence, the present revision.

3. Learned counsel appearing for the revision petitioner would contend that the Statement of Accounts EX.D.8 sent by the respondent to the petitioner showing the amount due by the petitioner herein varies from Ex.P.7, Statement of Accounts marked by the complainant. Further, even according to the learned Counsel for the Revision Petitioner, Rs.3,00,000/- belonging to the petitioner is available with the respondent company as security deposit and the complainant is liable to pay interest at 15.5% for the same. If that be the case, the question of paying the cheque amount of Rs.5,85,602/- does not arise. Hence, according to the learned Counsel for the Revision Petitioner, the courts below without taking into account of the above said aspects, have wrongly come to the conclusion that the petitioner has committed an offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him accordingly. Hence, the same has to be set aside.

4. Though notice has been served on the respondent/complainant none appeared. 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] after hearing the learned counsel for the petitioner.

5. Perused the records.

6. On a careful consideration of the entire evidence as well as of the judgments of the Courts below, it is seen that the petitioner has admitted the issuance of the cheque to the respondent. But, according to the revision petitioner, it was only a blank cheque which was given as security and the same was later on filled up by the complainant and used for lodging the present private complaint. In this regard, it is pertinent to point out that the petitioner has failed to give any reply to the statutory notice issued by the respondent-complainant. Therefore, it is clear that it is a business transaction in which cheque has been issued to the complainant.

7. Nextly, it is contended by the learned Counsel for the revision petitioner that the Statement of Accounts EX.D.8 sent by the respondent to the petitioner showing the amount due by the petitioner herein varies from Ex.P.7, Statement of Accounts marked on the side of the complainant. In this regard, the courts below have clearly held that since it was a continuous transaction and in that there was a statement of account sent to the petitioner to the respondent, that would not clearly give a picture about the exact amount due by the petitioner.

8. Thirdly, according to the revision petitioner, already a sum of Rs.3,00,000/- belonging to the petitioner is with the respondent and as per the norms of the respondent, 15.5% interest has to be added. If that is calculated and added to Rs.3,00,000/-, the same would come more than the cheque amount. The said presumption has to be rebutted by the petitioner herein by means of evidence. But the petitioner has failed to prove the same. In view of all the above, both the courts below have concurrently held against the petitioner. In that, I do not find any infirmity with the same.

9. At this stage, the learned Counsel for the revision petitioner would contend that the punishment imposed by the courts below is on higher side i.e. to undergo simple imprisonment of one year and to pay a compensation of Rs.6,00,000/- to the respondent which is over and above the cheque amount of Rs.5,85,000/-. Hence, the learned Counsel would pray this Court to show leniency in the matter of awarding sentence by setting aside the period of sentence imposed by the Courts below into one of payment of compensation and also taking into account the fact that the respondent/complainant also did not appear before this Court in spite of service of notice; that the matter is pending for the past six years and that the petitioner is willing to pay back the cheque amount.

10. In view of the above, the conviction is confirmed and the sentence of simple imprisonment imposed for one year is modified to one that of payment of Rs.5,85,000/-towards cheque amount and Rs.3,15,000/-towards compensation instead of Rs.6,00,000/-, totalling a sum of Rs.9,00,000/- including the cheque amount is ordered to be paid directly to the respondent/complainant by the petitioner, within a period of three months from the date of receipt of a copy of this order or deposit the same to the credit of C.C.No.4787 of 1999 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai. If any such deposit is made, the Court below shall disburse the said amount to the respondent/complainant on proper identification. In the event of failure to pay the amount 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. In such event, 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 imposed by the Courts below.

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

Sd/-
Assistant Registrar (Judicial)

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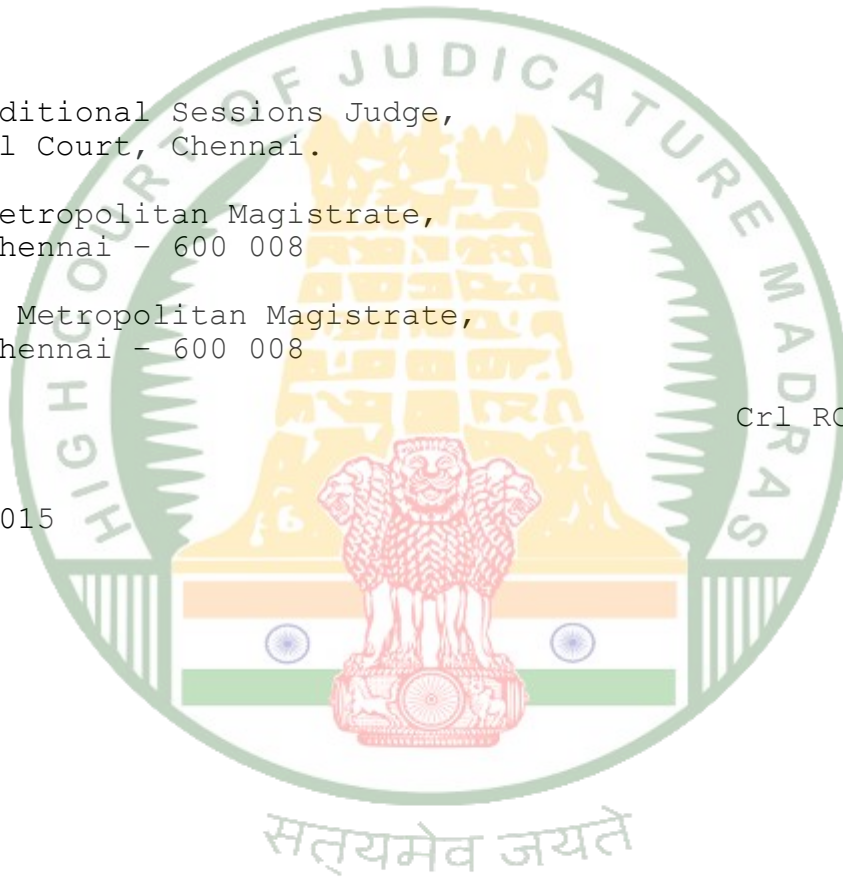
Sub-Assistant Registrar

To

1. The IV Additional Sessions Judge,
City Civil Court, Chennai.
2. The XIV Metropolitan Magistrate,
Egmore, Chennai - 600 008
3. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008

Crl RC No.935 of 2009

VD(CO)
sd : 20/10/2015



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