

Bail Slip: the petitioners / Accused were directed to be released on bail as per the order of this Court dated 27.6.2008 in CrI.M.P.1/2008 in CrI.R.C.867 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23-04-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 867 of 2008

1. M/s. Sri Senthil Textiles
Partnership Firm, Represented by its Partner
K. Seeranga Mudaliar, Son of Kandappa Mudaliar
2. K. Seeranga Mudaliar
Son of Kandappa Mudaliar
Partner, M/s. Sri Senthil Textiles
3. S. Senthilkumar
Son of K. Seeranga Mudaliar
Partner, M/s. Sri Senthil Textiles

All are residing at
New No.1/1, Ilango Street
Teachers' Colony, Erode - 11

.. Petitioners (Accused)

Versus

V.M. Periyasamy

.. Respondent (Complainant)

Petition filed under Section 397 and 401 of Criminal Procedure Code praying to set aside the order dated 30.05.2008 made in Criminal Appeal No. 61 of 2008 on the file of the Additional District Court (Fast Track Court No.I) Erode, confirming the order dated 28.01.2008 made in C.C. No.100 of 2001 on the file of Judicial Magistrate No.III, Erode.

For Petitioner : Mr. C.S. Saravanan
For Respondent : Mr. V.S. Kesavan

ORDER

The petitioners, who were arrayed as accused in C.C. No. 100 of 2001, stood convicted for the offence punishable under Section 138 of The Negotiable Instruments Act. As regards sentence, since the first petitioner happened to be a firm, the petitioners 2 and 3 were sentenced to undergo a simple imprisonment of six months together with fine of Rs.2,000/- each, in default to undergo simple imprisonment for two months. The fine amount payable by the first accused firm was directed to be paid by the second accused/second petitioner herein, failing which he has to undergo the default sentence. Assailing the judgment of conviction passed by the trial court, the petitioners filed Criminal Appeal No. 61 of 2008 and it

was also dismissed on 30.05.2008. This Criminal Revision Case is filed to set aside the aforesaid orders passed by the courts below.

2. According to the complainant/respondent, for the purpose of development of their business, the petitioners 2 and 3, for and on behalf of the first petitioner, being a partnership firm, have borrowed a sum of Rs.3,50,000/- from the respondent on 22.09.2000. On receipt of such amount, the second petitioner, for and on behalf of the first petitioner, signed two cheques bearing Cheque No. 613210 and 613211 both dated 22.11.2000 for Rs.1,70,000/- each drawn on Mercantile Bank, Erode Branch. The respondent presented the cheques for realisation but they were dishonoured for the reason there is no sufficient funds in the account of the petitioners. Therefore, on 04.12.2000, the respondent issued a statutory notice, but the said notice was returned with an endorsement "refused". Thereafter, the respondent has filed the complaint which was taken on file as C.C. No. 100 of 2001. During the course of trial, the complainant/respondent examined himself as PW1 and Exs. P1 to P6 were marked. On behalf of the accused/petitioners, one Rajkumar was examined as RW1 and Ex. R1 was marked. Upon consideration of the oral and documentary evidence, the trial court found the petitioners guilty of the offence and convicted them as aforesaid. Such conviction and sentence was affirmed by the appellate court in the appeal preferred by the petitioners.

3. Even though elaborate arguments have been advanced on behalf of the petitioners, the learned counsel for the petitioners restricted his argument only with respect to reduction of sentence and not on merits. According to the learned counsel for the petitioners, the partnership business carried on by the petitioners was heavily indebted and it was closed. The second petitioner herein is 82 years old and suffering from various age old ailment. The third petitioner, who is the son of the second petitioner is presently working in a hotel as a server and he has no wherewithal to pay the cheque amount. Therefore, the learned counsel for the petitioners prayed for reduction of the sentence.

4. The learned counsel for the respondent would contend that the trial court sentenced the petitioners 2 and 3 to undergo a simple imprisonment of six months together with fine of Rs.2,000/- each, in default to undergo simple imprisonment for two months. Therefore, the sentence need not be reduced any further and prayed for dismissal of the Criminal Revision Case.

5. I heard the counsel for both sides and perused the materials on record. The learned counsel for the petitioners did not argue the case on merits, rather, he only pleaded for reduction of sentence. Having regard to the submission of the counsel for the petitioner as well as the learned counsel for the respondent, I am inclined to reduce the sentence imposed on the petitioners. Accordingly, while upholding the conviction imposed on the petitioners under Section 138 of Negotiable Instruments Act, the sentence imposed on the petitioners is reduced to four months as against six months awarded by the trial court and confirmed by the appellate Court. There is no modification as regards the fine amount of Rs.2,000/- imposed by the trial court. The trial court is

directed to take necessary steps to secure the presence of the petitioners 2 and 3 herein to enable them to undergo the remaining period of sentence. With the above modification in sentence, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

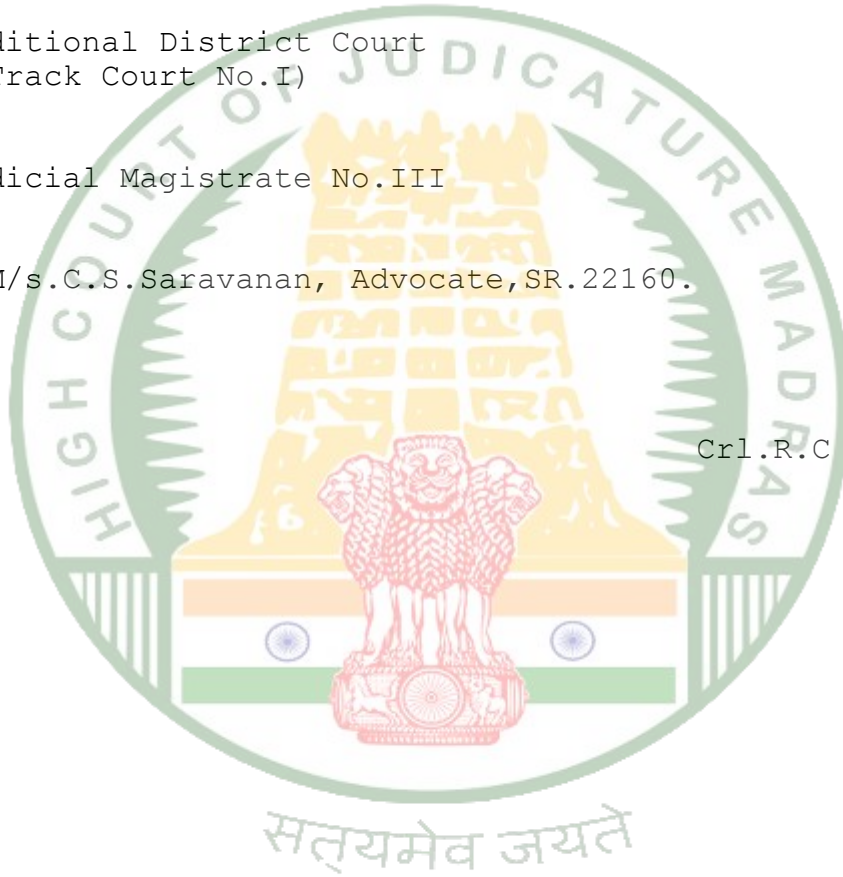
To

1. The Additional District Court
(Fast Track Court No.I)
Erode
2. The Judicial Magistrate No.III
Erode.

+1 cc to M/s.C.S.Saravanan, Advocate,SR.22160.

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krd 10/6

Crl.R.C No. 867 of 2008



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