

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.699 of 2013

Mallaiyan

.. Petitioner

Versus

Mahalakshmi

.. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 07.02.2013 passed by the learned V Additional District and Sessions Judge [Fast Track Court-II], Coimbatore in C.A.No.134 of 2012 in confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in C.C.No.245 of 2011 dated 29.03.2012.

For Petitioner : Mr.P.Venkatasubramaniam

For Respondent : No appearance

ORDER

Though the case has been listed under the caption "for dismissal", when the matter is taken up today, the learned counsel for the petitioner only seeks an adjournment of the matter. Till date, notice has also not been served on the respondent. Since this Court is not inclined to give adjournment in old matters, 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.245 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore 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 three months and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for two months. As against the conviction and sentence imposed, the petitioner filed Crl. Appeal No.134 of 2012 and the first appellate Court by judgment dated 07.02.2013 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 earlier borrowed a sum of Rs.6,00,000/- from the respondent/complainant during December 2006. Further, the

petitioner once again borrowed a sum of Rs.2,00,000/- for his business purposes and in order to discharge the legally enforceable debt, issued a post dated cheque for a sum of Rs.2,00,000/- bearing No.144930 dated 16.02.2007 drawn on Corporation Bank. However, when it was presented, the same was returned with the endorsement "insufficient funds". Hence, the complainant issued a legal notice; though a reply notice was issued, the amount was not repaid. Hence, the complaint.

4. The only ground raised by the accused in this revision is that the first appellate Court failed to appreciate the oral and documentary evidence adduced on the side of the petitioner and simply confirmed the order passed by the trial Court. It is his further contention that the first appellate Court had gone beyond the scope of Section 138 of the Negotiable Instruments Act, when the signature in the cheque was denied by the accused. Accordingly, he would pray for setting aside the conviction and sentence ordered by the Courts below.

5. Perused the records.

6. On a careful perusal of the judgments passed by the Courts below, it is seen that the trial court has clearly held that the complainant has proved her case by producing the bank documents to show that she has means to lend Rs.2,00,000/-. Further the Court below has held that though the Bank Manager has deposed that the subsequent cheques issued by the petitioner has been honoured, that cannot be a reason to conclude that the present case is false and this alone will not rebut the presumption. The trial court has also held that the cross examination of DW1, who is said to be aware of all money transactions of the accused, is not a credible witness and no credence could be attached to him. The petitioner has also in his evidence has stated that he used the issue blank cheques to one Maheswari, the relative of the complainant while borrowing the amount. The first appellate Court also after analysing the entire oral and documentary evidence produced confirmed the conviction and sentence ordered by the trial court.

7. It is also seen that though the complainant has stated that earlier the petitioner has borrowed Rs.6,00,000/-, the complaint has been filed only in respect of Rs.2,00,000/-, which was borrowed subsequently, for which, the disputed cheque has been issued and both the Courts below gave a concurrent finding to the effect that the accused has borrowed a sum of Rs.2,00,000/- and in order to discharge the same, he has issued the cheque in question and convicted the petitioner under Section 138 of Negotiable Instruments Act, warranting no interference in this revision.

8. At this juncture, the learned counsel for the petitioner would pray for leniency in the matter of awarding the sentence as the petitioner is a Senior Citizen.

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9. In view of the above, while confirming the conviction ordered by both the Courts below, this Court is inclined to modify the

sentence imposed for a period of three months simple imprisonment into one that of payment of compensation, as the petitioner being a Senior Citizen, aged about 68 years. Accordingly, the following order is passed:

"The sentence to undergo three months simple imprisonment is set aside. Instead the petitioner is directed to pay a sum of Rs.3,00,000/- [Rupees three lakhs only], viz., Rs.2,00,000/- (cheque amount) plus Rs.1,00,000/- as compensation, as the transaction took place eight years ago, either directly to the respondent/complainant or to the credit of C.C.No.245 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, within a period of three months from the date of receipt of a copy of this order. On such deposit being made, the learned Magistrate is directed to disburse the compensation amount to the respondent/complainant on proper identification. It is also made clear that if the petitioner/accused fail to deposit the compensation amount as ordered by this Court, within the stipulated time, he has to undergo simple imprisonment for a period of three months' 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 three months simple imprisonment imposed by the Courts below."

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

-Sd/-
Assistant Registrar(co)

//True copy//

Sub Assistant Registrar

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To

1. The V Additional District and Sessions Judge
[Fast Track Court-II], Coimbatore
2. The Judicial Magistrate, Fast Track Court
at Magisterial Level-II,
Coimbatore
3. The Public Prosecutor,
Madras