

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. RC. No.883 of 2013

Arokiya Selvaraj

.. Petitioner/Accused

Versus

Radha

.. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, to call for the records in Criminal Appeal No.40 of 2011 on the file of the learned District & Sessions Judge, Nagapattinam, and set aside the order dated 18.04.2013 confirming the conviction and the sentence passed in S.T.C.No.157 of 2010 on the file of the learned Judicial Magistrate-I, Nagapattinam, dated 19.07.2011.

For Petitioner : Mr.M.Govindaraju

For Respondent : Mr.S.Ambigapathi

ORDER

The petitioner is the accused and the respondent is the Complainant.

2. The revision has been filed by the petitioner against the Judgment dated 18.04.2013 passed in Crl.A. No. 40 of 2011 on the file of the learned District & Sessions Judge, Nagapattinam, confirming the Judgment dated 19.07.2011 passed in S.T.C.No.157 of 2010 on the file of the learned Judicial Magistrate-I, Nagapattinam.

3. The case of the complainant, the accused in his financial transaction with the complainant, borrowed a sum of Rs.2,85,000/-. To discharge the above said debt, the accused issued a cheque for the said amount dated 20.07.2009. When the said cheque was presented for collection, the same was returned with an endorsement "insufficient funds". Therefore, a statutory notice was issued to the accused on 06.02.2010. Since no payment was made even thereafter, the complainant has filed the present complaint for the

offences punishable under Section 138 of the Negotiable Instrument Act and the same was taken cognizance in S.T.C. No. 157 of 2010 on the file of the learned Judicial Magistrate-I, Nagapattinam. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- on the accused and in default to undergo Simple imprisonment for a period of three months. Aggrieved by the same, the accused has filed Crl.A. No.40 of 2011 before the learned District & Sessions Judge, Nagapattinam and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the First Appellate Court, the petitioner has preferred the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused did not argue on merits but confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submits that the accused had no intention to cheat the society. Both the courts below have not properly adduced the evidence and came to the wrong conclusion which is erroneous.

5. Percontra, learned counsel for the respondent/complainant would contend that if that be the case, the petitioner has not chosen to send any reply notice for the statutory notice issued on 06.02.2010. This aspect has been duly considered by both the courts below. Hence, there is no error of infirmity in the order passed by both the Courts below and prays for dismissal of the revision.

6. After some elaborate arguments, the learned counsel for the petitioner agreed to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for modifying the sentence. He also brought to the notice of this Court that a sum of Rs.50,000/- had already been deposited as per the order of this Court dated 16.07.2013. Learned counsel for the respondent has no serious objection for the submission made by the learned counsel for the petitioner.

7. I have perused the materials available on record.

8. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of three months.

9. On a careful analysis of the entire records, it is clear that there was a financial transactions between the accused and the complainant. Only to settle the amount, the cheque in question was issued and when the same was presented, it was returned with an

endorsement "insufficient funds". There is no dispute with regard to the issuance of cheque in question. Though it is the submission of the learned counsel for the petitioner that the cheque in question has been misused, he has not chosen to establish the same. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

10. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence and also the fact that the petitioner had already deposited a sum of Rs.50,000/- and is willing to settle the amount in question, I am of the view that instead of sending the petitioner to jail, in the interest of justice, 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.2,35,000/- (Rupees Two Lakhs Thirty Five Thousand only). The petitioner is directed to pay the amount of Rs.2,35,000/- to the complainant, within a period of three months from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to pay the said amount/or deposit in Court 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 accused.

11. With the above direction and modification, the Criminal Revision Case is partly allowed. MP.NOs.3 and 4 of 2013 are closed.

-s/d-

Assistant Registrar (CSIII)

dt:21/09/2015

True Copy

सत्यमेव जयते

Sub-Assistant Registrar

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To

1. The District & Sessions Judge, Nagapattinam.

2. The Judicial Magistrate-I, Nagapattinam.

+1 cc to Mr.S.Ambigapathi Advocate sr.43512

CRL.RC.No.883 of 2013

aa22/09/2015