

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1171 of 2016

&

Crl.M.P.No.10361 & 10362 of 2016

1.M/s. Karuns & Co
rep by Proprietor
Smt. Shankari Raj

2.Smt. Shankari Raj .. Petitioners / Accused
Prop.M/S.KARUNS & CO, Chennai

vs.

M/s. Impressive Automotives Service
Rep by its Proprietor
A.Jai shankar .. Respondent / Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order passed in C.A.No.57 of 2014 on 15.07.2016 by the learned Additional District and Sessions Judge, Krishnagiri, Hosur, confirming the order passed by the learned Judicial Magistrate, Fast Track Court, Hosur passed in S.T.C.No.210 of 2013 on 18.08.2014.

For Petitioner : Mr.M.Krishnamoorthy

For Respondent : Mr.S.Balaji

ORDER

This revision arises against two concurrent judgments of Courts below convicting the 2nd petitioner/second accused for offence u/s138 of Negotiable Instruments Act sentencing her to undergo 3 months S.I and to pay compensation in a sum of Rs.25,000/-

2. Respondent/complainant moved a prosecution informing that a cheque bearing No.575741 dated 25.02.2013 in a sum of Rs.1,00,000/- drawn on Indian Overseas Bank, stood issued to him by petitioner towards repayment of sale consideration, which upon presentation was returned unpaid for the reason "insufficient funds". Respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a

complaint had been filed.

3. Before the trial Court, the prosecution examined two witnesses and marked fifteen exhibits. One witness was examined on behalf of the defence and no exhibits were marked. On appreciation of materials before it, the trial Court under order dated 18.08.2014 rendered a finding of conviction and sentenced the 2nd petitioner to 3 months S.I. and to pay compensation of Rs.25,000/-. Against such finding, the petitioner filed C.A.No.57 of 2014 on the file of learned Additional District and Sessions Judge, Hosur. Under judgment dated 15.07.2016, the Appellate Court dismissed the appeal.

4. Respondent has filed S.T.C.No.210 of 2013 alleging offence u/s.138 of N.I Act in respect of a cheque for a sum of Rs.1,00,000/- issued by the 2nd petitioner/proprietor of the 1st petitioner company. It is admitted case that pursuant to issuing of NBW against the petitioner in S.T.C.No.210/2013 the petitioner was taken to the Police Station and there a sum of Rs.1,00,000/- had been paid to the respondent/complainant and as a consequence the petitioner was not produced before the Magistrate. Though the Police agency is totally wrong in adopting a procedure of stalling the execution of a NBW issued by a Court pursuant to an agreement between parties and has failed in its duty in producing the petitioner before the concerned Magistrate, this Court would read the acceptance of Rs.1,00,000/- by the respondent in the manner stated as towards the cheque amount in the instant case. While so, we are unable to accept the submission of the learned counsel for respondent that out of a sum of Rs.3,00,000/- only a sum of Rs.1,00,000/- had been repaid at the police station.

5. Courts below have convicted the petitioner and sentenced her to three months imprisonment. While confirming the conviction we would modify the sentence to one of fine of Rs.1,00,000/- which sum already has been paid over to the respondent. The petitioners shall suffer no further liability or imprisonment in respect of S.T.C.No.210 of 2013 on the file learned Judicial Magistrate, Fast Track Court, Hosur.

Accordingly, this Criminal revision is ordered. Connected miscellaneous petition are closed.

kpr

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Sd/-

Assistant Registrar (CO)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The Additional District and
Sessions Judge, Krishnagiri, Hosur

2. The Judicial Magistrate,
Fast Track Court, Hosur

+1CC to MR.M.KRISHNAMOORTHY Advocate SR.NO.68891
+1CC to MR.S.BALAJI Advocate SR.NO.68833

Cr1.R.C.No.1171 of 2016

NM[CO]
MK:06/01/2017



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