

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

(Orders Reserved on : 09.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CrI.R.C.No.685 of 2008

Dr.Natesan

.... Petitioner/Complainant

Vs.

K.M.Arumugam,
Proprietor,
Sri Ram Khadi Bhavan,
16, Chitrakar Nagar,
Velliyankadu,
Tirupur.

.... Respondent/Accused

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, to call for the records, set aside the order of the learned Judicial Magistrate No.II, Tirupur in S.T.C.No.3878 of 2005, dated 18.03.2008, enhance the sentence, award adequate compensation to the petitioner under Section 357 of Cr.P.C.

For Petitioner : Mr.V.Vijayakumar

For Respondent : No Appearance

ORDER

This Criminal Revision Case is directed against the order passed by the learned Judicial Magistrate No.II, Tirupur in S.T.C.No.3878 of 2005, dated 18.03.2008.

2. Since this criminal revision case is filed before the amendment of Section 372 of Cr.P.C., this Court is of the considered view that this criminal revision case has to be heard by this Court.

3. The learned counsel for the petitioner would mainly contend that the trial Court, after considering the evidence of both parties, came to a conclusion that the offence against the accused is clearly proved and at the same time, awarded punishment of one month rigorous imprisonment and imposed a fine

of Rs.5,000/- alone and not awarded compensation to the present petitioner/complainant.

4. The learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court reported in 2006 STPL (LE) 35334 SC (Shailesh JasvantBhai & Another Vs. State of Gujarat & others), wherein, at paragraph Nos.7 and 12, the Hon'ble Supreme Court has held as follows:-

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

12. In *Dhananjoy Chatterjee v. State of W.B.* (1994 (2) SCC 220), this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts

should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment."

5. Since the trial Court has failed to consider the legal principles of the Hon'ble Supreme Court laid down in the above said case, this criminal revision case is filed to enhance the sentence and also to award adequate compensation. Hence, this criminal revision case has to be allowed.

6. When the matter was taken up for hearing, the respondent has not chosen to appear either in person or through counsel.

7. This Court perused the records. On a perusal of the order passed by the learned Judicial Magistrate No.II, Tiruppur, it is seen that the respondent/accused had received a sum of Rs.4,50,000/- from the petitioner/complainant and executed a promissory note in favour of the complainant and the said promissory note was marked as Ex.P.1. Further, to settle the principal amount, the accused had issued a cheque bearing No.449397, dated 20.09.2005, in favour of the petitioner and when the said cheque was presented for collection, it was returned as "insufficient funds". Hence, the petitioner/complainant had issued a legal notice-Ex.P.5 to the respondent/accused and even after receiving the said notice also, the respondent/accused has not paid any amount. Hence, the complainant has filed a complaint before the learned Judicial Magistrate No.II, Tiruppur, and the learned Magistrate, after considering the evidence, passed an order and awarded a sentence of one month rigorous imprisonment and imposed a fine of Rs.5,000/-. It is admitted by the learned counsel for the petitioner that as against the said order, the respondent/accused has not preferred any appeal.

8. In this case, the respondent/accused had borrowed a sum of Rs.4,50,000/- from the petitioner/complainant and executed a promissory note and also issued a cheque for the principal amount. Considering the facts and circumstances of the case, the learned Magistrate, awarded appropriate punishment to the respondent/accused. Therefore, there is no infirmity or illegality in the order passed by the learned Judicial Magistrate No.II, Tiruppur. This Court finds no reason to interfere with the order passed by the learned Magistrate which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

9. In the result, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

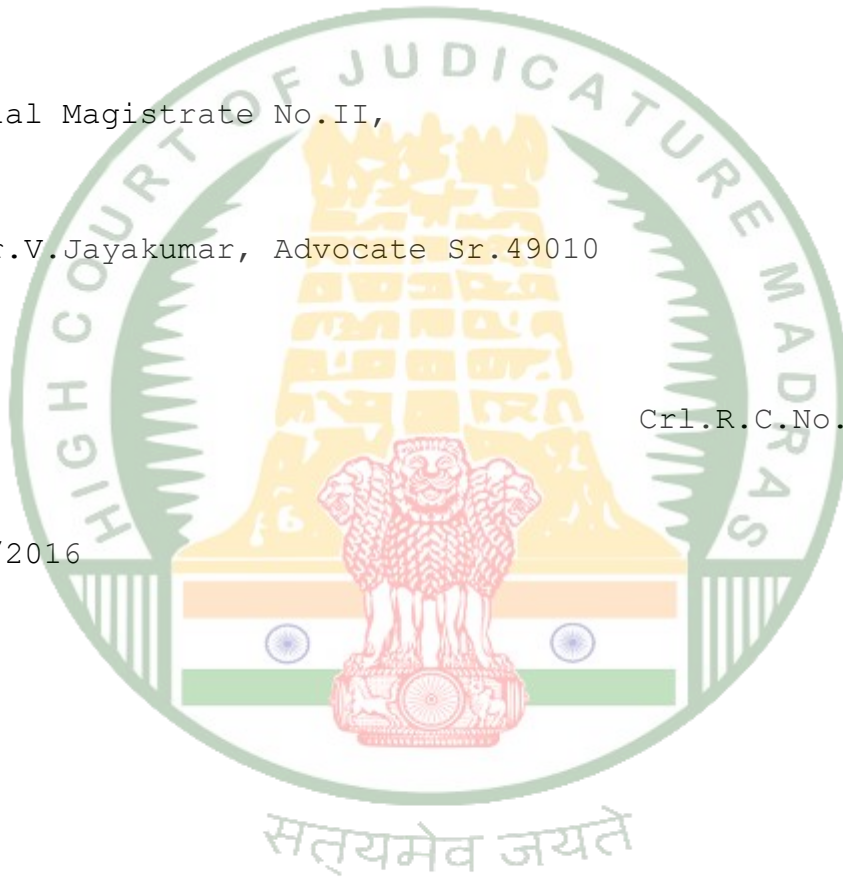
To

The Judicial Magistrate No.II,
Tirupur.

+1cc to Mr.V.Jayakumar, Advocate Sr.49010

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