

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2018

PRONOUNCED ON : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.258 of 2011

Senthil Kumar

... Petitioner /
Complainant

-vs-

1.Sri Venkatesha Paper & Boards,
Represented by its Director Soundararajan
Palani Main Road, Swamiathapuram,
Palani Taluk.

2.M.Soundarajan

3.Meena R.Sampath

4.Ramesh Jagatini ... Respondents / Accused

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., praying to call for the records in C.C.No.202 of 2005 on the file of the learned Judicial Magistrate No.I, Udumalpet and to set aside only the portion of the order dated 19.11.2010, wherein the respondents have been admonished under Section 3 of the Probation of Offenders Act, 1958, and further to pay compensation of Rs.1,38,981/- under Section 357(3) IPC for an offence under Section 138 of Negotiable Instruments Act and in default to undergo simple imprisonment for two months.

For Petitioner : Mr.S.Shrenik Raj

For Respondents : Mr.J.Pradeep,
for Mr.P.Saravana Sowmiyan.

ORDER

The private complainant is the revision petitioner herein. He has filed this revision case to set aside only the portion of the order dated 19.11.2010, in C.C.No.202 of 2005 passed by the learned Judicial Magistrate No.I, Udumalpet, wherein the respondents have been admonished under Section 3 of

the Probation of Offenders Act, 1958, and further directed to pay compensation of Rs.1,38,981/- (Rupees One Lakh Thirty Eight Thousand Nine Hundred and Eighty One Only) in default to undergo simple imprisonment for two months as provided under Section 357 (3) IPC for an offence under Section 138 of Negotiable Instruments Act.

2.The private complainant has filed a private complaint before the learned Judicial Magistrate No.1, Udumalpet and the same has been taken on file as C.C.No.202 of 2005, wherein it is alleged that the accused had business dealings for several years and the first accused is the company, while the accused 2 and 3 are in charge of the day-to-day administration of the company, the fourth accused is the authorised signatory of the company. The present complaint is filed through the power agent of the complainant by name Senthilkumar. The accused is outstanding for an amount Rs.16,00,000/- (Rupees Sixteen Lakhs Only), which are the charges levied by the complainant herein. As part payment of the existing liability, the accused 3 and 4 have issued four cheques, totalling Rs.1,38,981/- drawn on Indian Bank, Anna Salai, Madras. The cheques were dated 22.09.2003 for the value of Rs.38,089/- (Rupees Thirty Eight Thousand and Eighty Nine Only), 18.10.2003 for the value of Rs.56,845/- (Rupees Fifty Six Thousand Eight Hundred and Forty Five Only), 25.11.2003 for the value of Rs.13,829/- (Rupees Thirteen Thousand Eight Hundred and Twenty Nine Only) and 28.11.2003 for the value of Rs.30,218/- (Rupees Thirty Thousand Two Hundred and Eighteen Only). When the cheques were presented for collection, they were returned as unpaid for the reason funds insufficient. The complainant then, issued legal notice dated 02.04.2004, calling upon the accused to pay the money due on the dishonored cheques, within 15 days from the date of receipt of the notice and even after the receipt of the notice, the accused had not paid back the amount and hence, they committed an offence under Section 138 of Negotiable Instruments Act.

3.Before the trial Court, P.W.1 was examined and Exs.P.1 to P.11 were marked.

4.It appears from the records that during the course of trial, the accused has filed C.M.P.No.175 of 2008 under Section 147 of Negotiable Instruments Act, seeking to compound the present case. However, it was objected by the private complainant and accordingly, the same was dismissed. The trial Court has observed that at the time of filing the above petition to compound the offence, they also enclosed the pay order for a sum of Rs.1,38,981/- covering the entire amount of four cheques, subject matter of this case.

5. Aggrieved against the said order of dismissal in the above petition, it appears that the accused persons have preferred Criminal Revision Case in CrI.R.C.No.168 of 2018 before this Court, wherein, this Court has dismissed the claim, however, directed the learned Judicial Magistrate No.1, Udumalpet, to consider the case of the petitioners and his bona fide and to show leniency in sentencing the accused. After conclusion of the trial, the learned Judicial Magistrate No.1, Udumalpet has followed the decision rendered in the case of P.S.Sethuraman Vs. P.Elavazhagan reported in 2010 1 L.W.(CrI) 697, wherein this Court has observed that the trial Court may apply the relevant provision under Section 3 of the Probation of Offenders act and admonish the accused subject to the conditions laid under Section 361 Cr.P.C.

6. Accordingly, the learned Judicial Magistrate No.1, Udumalpet, after convicting the respondents / accused has admonished them under Section 3 of Probation of Offenders Act, and ordered to pay a sum of Rs.1,38,981/- representing cheque amount as provided under Section 357(3) Cr.P.C.

7. Aggrieved against the said grant of admonition under Probation of Offenders Act, this Criminal Revision Case has been filed.

8. Heard the learned counsel appearing for the revision petitioner and the respondents / accused and perused the materials available on record carefully.

9. The learned counsel appearing for the revision petitioner would contend that the respondents having been found guilty under Section 138 of Negotiable Instruments Act and the petitioner has proved his case beyond any reasonable doubt, as should have punished the respondents with maximum punishment, instead the trial Court has chosen to admonish the respondents under Section 3 of the Probation of Offenders Act, 1958 and the order passed in CrI.R.C.No.168 of 2008 by this Court made observation to be lenient, while punishing and not to admonish the respondents.

10. The learned counsel would further submit that the very same respondents / accused were convicted in C.C.No.157 of 2005, by order dated 23.05.2007 and given admonition under the Probation of Offenders Act. Therefore, in view of the previous conviction in the above said calendar case, the ground of admonition under the Probation of Offenders Act for this case is unsustainable in law.

11. Per contra, the learned counsel appearing for the respondents / accused would contend that this is also a case

between the very same party therein. He has also filed a petition for compounding the offence and it was subjected to as like in the present case and therefore, the learned Judicial Magistrate No.1, Udumalpet had granted admonition.

12.Taking into consideration of the fact that there was a previous conviction in C.C.No.157 of 2005 dated 23.05.2007, this Court is of the considered view that one of the essential conditions for application under Section 361 Cr.P.C., is that there should not be any previous conviction. When that being the case, the provision of the Probation of Offenders Act cannot be made applicable and accordingly, this Court is of the considered view that the order of the trial Court is to be interfered with.

13.As stated supra, right from the very inception, it appears that the respondents / accused have offered to settle the cheque amount, however, the revision petitioner / private complainant is not willing to settle this case. On the contrary, he is interested in settling various other cases between the parties in the other Courts. In fact, the trial Court has also observed that due to ego of the revision petitioner / private complainant, he is not settling the amount and he wanted to settle the entire issue, which is pending before various Courts.

14.Taking note of the bona fide attitude of the respondents / accused in offering the demand draft for the cheque amount, this Court is of the considered view that merely the conviction under Section 138 of Negotiable Instruments Act is maintained, the sentence already imposed by the trial Court has been modified as to that of the fine of Rs.5,000/- (Rupees Five Thousand Only).

15.With these observations, this Criminal Revision Case is allowed. The respondents / accused are directed to pay a sum of Rs.5,000/- within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Myr/Jr1

To

1.The Judicial Magistrate No.I, Udumalpet.

2.ThePublic Prosecutor,
Madras High Court, Madras.

+1 cc to Mr.S.Shrenik Raj, Advocate Sr.No.79619

+1 cc to M/s.P.Saravana Sowmiyan, Advocate Sr.No.79984

Order made in
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RSV(CO)
CSL/04.12.2018



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