

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.811 of 2013

A. Subramaniaym

...Petitioner/Complainant

Vs.

S.Shanmuganathan

... Respondent/Accused

Prayer: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to modify the sentence imposed on the accused by the learned Magistrate-III, Salem in STC No.1003 of 2011, dated 28.03.2013.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Notice not sent

ORDER

This Criminal Revision has been filed to modify the sentence imposed on the accused/respondent by an order dated 28.03.2013 passed by the learned Judicial Magistrate-III, Salem.

2 The case of the prosecution is that the respondent/accused was having agricultural land in Sithur Village, Edapaddy Taluk and he has offered to sell the same. The petitioner along with one M.Palanisamy son of Marimuthu Gounder entered into a sale agreement with the accused on 06.03.2009 for purchasing the property for a total consideration of Rs.35,50,000/- and paid a sum of Rs.10,00,000/- as advance on the same day and subsequently, paid a sum of Rs.5,00,000/- to the respondent/accused. Thereafter, the petitioner along with M. Palanisamy approached the respondent/accused stating that they were not in a position to pay the balance of sale price and requested the accused to return the advance amount with interest. The respondent/accused agreed to return the amount of Rs.15,00,000/- with interest of Rs.2,00,000/- i.e. Rs.17,00,000/-. As agreed by the respondent/accused returned a sum of Rs.10,00,000/- to the complainant and M.Palanisamy and agreed to repay the balance of Rs.7,00,000/- within 40 days.

hereafter, in spite of repeated demands, the accused issued cheques bearing No.634940 and 634939, dated 20.03.2011 for a sum

of Rs.3,50,000/- each, drawn on Indian Overseas Bank. As informed by the respondent/accused, the petitioner presented the cheque on 13.07.2011 for encashment. But the cheques were returned unpaid on 15.07.2011 with a memo stating "Funds insufficient".

3 Hence, the petitioner filed a private complaint under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate No.3, Salem. The learned Magistrate, after trial, found that the cheque, which was issued by the respondent has been returned as "Funds Insufficient". Hence, the learned Magistrate came to the conclusion that the respondent has committed the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo three months simple imprisonment and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment and awarded a sum of Rs.2,00,000/- as compensation to the petitioner, in default, to undergo 3 months simple imprisonment, by an order 28.03.2013.

4 As against the order dated 28.03.2003, the petitioner/complainant has preferred this criminal revision before this Court to modify the sentence imposed on the accused.

5 The learned Counsel for the petitioner would submit that the petitioner filed a transfer O.P. However, before the same could be decided the learned Magistrate has concluded the trial. The learned counsel would submit that the punishment awarded is grossly low, compound to the cheque amount. The learned counsel, therefore, pressed that the quantum of punishment may be increased.

6 When the matter is called, there is no representation for the respondent, as the notice has not been served on him. Heard the learned counsel for the petitioner and perused the materials available on record.

7 It is brought to the attention of this court that as against the conviction and sentence imposed on him, the accused has preferred an appeal before the sessions Court. The petitioner has filed a petition seeking transfer of the case. The sessions Judge is yet to decide on the same.

8 In the meantime, the present revision has been filed. The petitioner is not seriously pursuing the transfer O.P. This court has gone through the entire materials on records and the judgment of the learned Judicial Magistrate. This Court does not find any reason to interfere with the order passed by the Court below.

9 In the absence of perversity in appreciating the evidence, normally the revision Court will not interfere with the judgment of trial Court. When there is no minimum sentence and compensation is prescribed in the penal provision, it is purely discretionary power of the trial Court to impose any sentence or compensation with the maximum limit and normally the revision Court cannot interfere with the sentence awarded by the trial Court, unless it finds any arbitrariness. In this case, this Court does not find any arbitrariness in the sentence and compensation imposed by the trial Court.

10 Under these circumstances, this Court does not find any reason to interfere in the order passed by the learned Magistrate. In the result, the revision petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.3,
Salem.

2.-Do-Thro' The Chief Judicial Magistrate,
Salem.

+1 cc to M/s.S.Kalyanaraman,Advocate Sr.No. 73776

RS-I (C.O.)
AKM/ 16.08.19/ 3P-4C/