

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Cr1.R.C.No.793 of 2011

S.T.Rajendran ..... Petitioner / Accused

Vs

M.Manickam ..... Respondent/ Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the conviction imposed in the judgement dated 11.03.2011 made in C.A.No.167 of 2010 on the file of the Additional Sessions Court/ Fast Track Court No.II, Gobichettipalayam, confirming the conviction imposed in the judgement dated 02.03.2010 made in C.C.No.160 of 2006 on the file of the Judicial Magistrate No.I, Gobichettipalayam sentencing him to undergo one year Simple for the alleged offence under section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Kaithamalaikumaran

O R D E R

The revision is preferred against the conviction imposed by the learned Additional Session Judge, Fast Track Court No.II, Gobichettipalayam, in C.A.167 of 2010 dated 11.03.2011, confirming the conviction imposed in the judgment dated 02.03.2010 in C.C.No.160 of 2006 by the learned Judicial Magistrate No.1, Gobichettipalayam, sentencing the revision petitioner/accused to undergo one year simple imprisonment.

2. The revision petitioner/accused borrowed a sum of Rs.25,000/- from the respondent/complainant on 20.07.2005 and executed a pronote. When the complainant approached the accused for repayment of loan, the accused did not pay the same. After

repeated demands, he issued Ex.P.2 cheque dated 23.01.2006 for Rs.25,000/- drawn on Indian Overseas Bank, Kavunthampadi Branch and when the same was deposited into the bank of the complainant i.e., Karur Vysia Bank, Gobichettipalayam Branch, it was returned for the reason insufficient funds on 27.01.2010. Immediately, the complainant issued legal notice Ex.P.4 to the accused and the same was received by the accused on 10.2.2006 under Ex.P.5 acknowledgement card. Since the accused has not paid the amount even after the receipt of notice the complainant has filed a complaint under Section 138 of N.I.Act against the accused.

3. Of course statutory presumption can be rebutted by preponderance of probabilities, in this case no attempt was made by the accused to produce any materials to dislodge the legal presumption. Rather he is not even to chose to cross examine the witnesses and deny the loan amount, issuance of cheque or the signatures in the pronote, cheque, acknowledgment card etc., This Court does not find any infirmity or illegality in the order passed by the trial Court.

4. However, the learned counsel for the petitioner submitted that the petitioner is poor man and only Rs.25,000/- is the subject matter of the cheque, leniency may be shown to the accused. Having considered the submission of the learned counsel for the revision petitioner, and the fact that the cheque was issued only for a sum of Rs.25,000/-, I am of the view that one year punishment is excessive. Considering the gravity of the offence and the nature of the transaction and the amount involved is only Rs.25,000/-, I am inclined to reduce the sentence from one year to three months.

5. In view of the above, the criminal revision case is disposed of, modifying the sentence from one year to three months. The trial Court is directed to take necessary steps to secure the accused to serve the remaining period of sentence.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ggs

To

1.The Additional Sessions Judge  
Fast Track Court No.II,  
Gobichettipalayam.

2.The Judicial Magistrate No.I,  
Gobichettipalayam.

3.The Section Officer Criminal Section, High Court Madras.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.5164

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KK(CO)  
RRK(01/03/2018)



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