

Bail Slip

That the appellant/Accused namely E.P. Easwaran, S/o. Palaniappan gounder was directed to be released on bail as per the order of this court dt. 12.08.2010 & made in M.P.No.1 of 2010 in Crl.RC.No.340/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.7.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL.RC. No.340 of 2010

E.P.Easwaran .. Petitioner/accused

Versus

Rameshwarlal Dayama .. Respondent/ Complainant

Petition filed under Sections 397 read with 401 of the Criminal Procedure Code, against the order passed by the learned Additional District Sessions Court /FTC - 1, Erode in C.A.No.65 of 2009, dated 26.10.2009 whereby confirming the order passed in C.C.No.666 of 2006, dated 26.3.2009 on the file of Judicial Magistrate II, Erode imposing sentence six months imprisonment and fine Rs.4000/- failing which two months imprisonment for the alleged offence under Section 138 of Negotiable Instrument Act.

For Petitioner : Mr.C.Prakasam
For respondent : No Appearance

ORDER

The petitioner is the accused and the respondent is the complainant.

2. The revision has been filed by the petitioner accused against the Judgment dated 26.10.2009 passed in Crl.A. No. 65 of 2009 on the file of the Additional District Sessions Judge, FTC - I, Erode, confirming the Judgment dated 26.3.2009 passed in C.C. No.666 of 2006 on the file of the learned Judicial Magistrate No.II, Erode.

3. The case of the complainant is that the accused purchased textile goods from the complainant on credit basis on various dates for a sum of Rs.1,15,515/-; Rs.1,07,650/- and Rs.22,23,165/-. To discharge the above said debt, the accused issued two cheques dated 10.7.2006 and 12.7.2006. When the said cheques were presented for collection, the same were returned with an endorsement "insufficient funds". Therefore, a statutory notice was issued to the accused. Since no payment was made even thereafter, the complainant has filed the present complaint for the offences punishable under Section

138 of the Negotiable Instrument Act and the same was taken cognizance in C.C. No. 666 of 2006 on the file of the learned Judicial Magistrate No.II, Erode. Ultimately, after trial, the trial court convicted the accused for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.4,000/- and in default to undergo Simple imprisonment for a period of two months. Aggrieved by the same, the accused has filed Crl.A. No.65 of 2009 before the learned Additional District and Sessions Judge, FTC-I, Erode and the same was dismissed by confirming the judgment of the trial Court. Aggrieved by the order passed by the first appellate Court, the petitioner has filed the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner/accused did not argue on merits but confined his argument only on the question of sentence imposed on the petitioner by the courts below. The learned counsel for the petitioner submitted that the petitioner has paid certain amount but the same has not been credited to. However, now the petitioner is willing to pay the entire cheque amount and, therefore, the learned counsel for the petitioner prayed for showing leniency against the petitioner.

5. Though notice was served on the respondent / there is no representation for the respondent. Since the matter is kept pending from the year 2010, the same is taken up for disposal on merits.

6. I have perused the materials available on record.

7. The trial court convicted the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.4,000/- and in default to undergo simple imprisonment for a period of two months.

8. On a careful analysis of the entire records, it is clear that there was business transactions between the accused and the complainant. Only to settle the amount, the cheques in question were issued and when the same were presented, it was returned with an endorsement "insufficient funds". There is no dispute with regard to the issuance of cheques in question. Though it is the submission of the learned counsel for the petitioner that the petitioner paid certain amount, he has not produced any documents to prove the same. Therefore, the Courts below have rightly come to the conclusion that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

9. However, taking into consideration the submission made by the learned counsel for the petitioner and the fact that he is argued only on the question of sentence and also the fact that the petitioner is willing to settle the amount in question, I am of the view that instead of sending the petitioner to jail, in the interest of justice, he may be directed to pay the entire cheques amount as compensation. Accordingly, while confirming the conviction imposed by the Courts below, the sentence is modified to that of payment of entire cheques amount. The petitioner is directed to deposit or to

pay the entire cheques amount to the respondent / complainant directly within a period of four months from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to pay the said amount/or deposit in Court within the above stipulated period, he shall undergo the period of sentence as imposed by the Courts below and this order will not enure to the benefit of the accused.

With the above direction and modification, the Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The first Additional District and Sessions Judge,
Fast Track
Court No.1, Erode.
 2. The Judicial Magistrate No.II, Erode.
 - 3.-do- Through The Chief Judicial Magistrat, Erode.
 4. The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr.C. Prakasam, Advocate Sr.38141

CRL.RC.No.340 of 2010

SVI (CO)
Eu 14.08.15

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