

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.353 of 2013

Yahaya ...Petitioner

Vs.

M/s.Jabir Leathers,

Rep. by its Proprietrix E.Mallika,

Rep. by Manager and Power Agent S.M.Essak,

S/o.Shaik Imam,

D.No.172/B/2, IX, MSA Tannery Street,

B.P.Agraharam,

Erode-638 005. ...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order in C.A.No.131 of 2012 passed by the learned I Additional Sessions Judge of Erode dated 08.01.2013 confirming the judgment of the learned Judicial Magistrate, Fast Track Court, Magisterial Level II, Erode in S.T.C.No.5/2012 dated 22.06.2012.

For Petitioners : Mr.C. Ramkumar

For Respondents : Mr.M.Guruprasath

O R D E R

This Criminal Revision has been filed to set aside the order in C.A.No.131 of 2012 passed by the learned I Additional Sessions Judge, Erode, dated 08.01.2013, confirming the judgment of the learned Judicial Magistrate, Fast Track Court, Magisterial Level II, Erode in S.T.C.No.5/2012 dated 22.06.2012.

2. The respondent/complainant has filed a private complaint before the learned Judicial Magistrate, Fast Track Court No.II, Erode and the same was taken on file in S.T.C.No.5 of 2012. The learned Magistrate, after trial, found the appellant/accused guilty under Sections 138 and 142 of Negotiable Instruments Act, and convicted him under Section 255(2) Cr.P.C. and sentenced him to undergo simple imprisonment for a period of one year for the offence under section 138 and 142 of N.I. Act and imposed with a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months. Challenging the said conviction and sentence, the accused had filed appeal in C.A.No.131 of 2012, before the learned I Additional Sessions Judge, Erode. The lower appellate Court, being fact finding Court, re-appreciated the entire evidence, and after giving due opportunities to both the parties, dismissed the appeal by judgment dated 08.01.2013 and confirmed the conviction and sentence passed by the trial Court.

3. Aggrieved against the said judgment dated 08.01.2013 made in C.A.No.131 of 2012, the accused has preferred this present criminal revision before this Court.

4. When the matter was taken up for hearing on 07.08.2018, there was no representation on behalf of the petitioner/accused. Therefore, the matter was directed to be listed on 28.08.2018 under the

caption [for dismissal]. When the matter came up for hearing on 28.08.2018, the learned counsel for the petitioner seeks adjournment, which this Court was not inclined to grant, since the revision is pending from the year 2013. Therefore, this Court dismissed the Criminal Revision for non prosecution and also directed the respondent police to secure the custody of the accused to undergo punishment imposed by the Courts below.

5. Subsequently, the petitioner has filed the restoration petition to restore the Criminal Revision Case which was dismissed for non prosecution on 28.08.2018 and the same was allowed by this Court on 05.10.2018. In the meantime, the revision petitioner was secured and he is in prison. Now, the petitioner is ready to settle the entire cheque amount and he has also deposited a sum of Rs.1,50,000/- due to the respondent, before the trial Court, for which he has produced the xerox copy of the deposit receipt. Further, he is ready to settle the entire cheque amount.

6. Today, the learned counsel for the petitioner/accused is making a payment of Rs.3,50,000/- to the respondent before this Court. The learned counsel for the respondent has made an endorsement to that effect. The learned counsel for the petitioner has also made an endorsement that the respondent shall be permitted to withdraw Rs,1,50,000/-, which was deposited before the trial Court.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Considering the fact that the petitioner/accused has settled the entire cheque amount and the offence is also compoundable offence. Since the appeal arising out of private complaint, parties have settled the matter and compounded the offence, nothing survives in the revision.

9. Therefore, the judgment of conviction and sentence passed by the Courts below are set-aside. The Superintendent of Police, Central Prison, Coimbatore is directed to release the revision petitioner/accused forthwith. The Criminal Revision Case is disposed of with the above directions.

05.10.2018

Index : Yes/No

Speaking order/non speaking order

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Note: Issue order copy on 05.10.2018

To

1.The I Additional Sessions Judge, Erode

2.The Judicial Magistrate, Fast Track Court,
Magisterial Level II, Erode.

3. The Superintendent of Police, Central Prison,
Coimbatore.

P.VELMURUGAN, J.,

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