



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.19189 of 2016

P.Chandrasekaran ... Petitioner/Petitioner/Complainant
-Vs-

M.Deepalakshmi ... Respondent/Respondent/Accused

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order passed in Crl.R.C.No.35 of 2014 on the file of the III Additional District and Sessions Court, Tirunelveli, dated 13.04.2016, confirming the order passed in S.T.C.No.1960 of 2009 on the file of the Judicial Magistrate court No.1, Tirunelveli, dated 02.02.2010 and set aside the same.

For Petitioner : Mr.T.Selvan
For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed aggrieved by the order passed by the III Additional District and Sessions Court, Tirunelveli, dismissing the Criminal revision petition filed by the petitioner for enhancement of sentence for an offence committed under Section 138 of the Negotiable Instruments Act.

2.The petitioner is the complainant in complaint under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate No.I, Tirunelveli, by judgment, dated 02.02.2010, made in S.T.C.No.1960 of 2009 after finding the respondent as guilty for an offence under Section 138 of Negotiable Instruments Act, imposed a sentence of Rs.10,000/- as fine and in default three months simple imprisonment. In this case, the cheque amount that is involved is Rs.5,00,000/-.

3.The petitioner aggrieved by the same filed Criminal Revision Petition before the III Additional District and Sessions Court, Tirunelveli and the Sessions Court has also confirmed the sentence passed by the learned Judicial Magistrate.

4.On going through the records, it appears that for a cheque amount of Rs.5,00,000/-, a sentence of Rs.10,000/- has been imposed by the Court below. This, in the considered view of this Court is a flout of the law. Imposing such punishment goes against the very purpose of the enacting Section 138 of the Negotiable Instruments Act. Both the learned Judicial Magistrate, as well as the District



Judge, at the least, were insensitive to the gravity of the offence. In this case, the cheque amount is admittedly Rs.5,00,000/-. Therefore, the Court below having found the respondent guilty, will have to impose an appropriate sentence as punishment against the respondent. It is with this purpose, there was an amendment to the provision, wherein the term of imprisonment was extended to two years and the fine that may be imposed by a Court was extended to twice the amount of cheque. This amendment came into force in the year 2003 w.e.f. 06.02.2003. Both the Courts below were oblivious to the said amendment that had taken place. Both the Courts were swayed by the fact that the accused person is a lady. Once an offence has been committed, it makes no difference between a male and female accused person.

5. In the facts and circumstances of the case, this court finds that the order of the III Additional District and Sessions Court, Tirunelveli, is illegal and does not commensurate with the punishment that has been provided under Section 138 of the Negotiable Instruments Act. Accordingly, the order of the III Additional District and Sessions Judge, Tirunelveli, made in CrI.R.C.No.35 of 2014, dated 13.04.2016 is hereby set aside. The matter is remanded to the III Additional District and Sessions Judge, Tirunelveli, to decide CrI.R.C.No.35 of 2014 in consonance with the punishment provided under Section 138 of the Negotiable Instruments Act. The said Court shall issue notice to the

respondent/accused and complete the proceedings within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

TM

To

1. The III Additional District and Sessions Judge,
Tirunelveli.

2. The Judicial Magistrate No.I,
Tirunelveli.

+1cc to Mr.T.Selvan, Advocate in SR No.82140

CRL.O.P. (MD) No.19189 of 2016