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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C.(MD)No.88 of 2016
and
Crl.M.P(MD) No.2622 of 2017

V.Arumugam .. Petitioner/Sole Accused

Vs.

N.Varathan .. Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the entire records pertaining to the judgment delivered by the learned Judicial Magistrate No.VI, Trichy, Trichy District in C.C.No.423 of 2006 vide his judgment dated 22.07.2014 which has been subsequently confirmed by the learned II Additional District Judge, Trichy, Trichy District in C.A.No.124 of 2014 vide judgment dated 18.12.2015 and set aside the same and consequently acquit the petitioner.

For Petitioner : Mr.M.Pitchai Muthu

For Respondent : Mr.S.T.Sasidharan Tamilkani

ORDER

Heard the learned counsel appearing for the revision petitioner.

2. This revision case is arising out of Section 138 of Negotiable Instruments Act, where a cheque issued to discharge the liability of Rs.80,000/- bounced for 'want of funds' and therefore, the respondent herein, has initiated prosecution against the revision petitioner.

3. Before the trial Court as well as the Appellate Court, the accused/petitioner has lost his case and the Courts below have held him guilty for offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and pay a compensation of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only), which is twice the cheque amount.

4. Having lost the case before both the Courts below, the petitioner has preferred this revision petition, questioning the judgment of the Courts below, imposing both sentence and twice the cheque amount as fine as compensation. Pointing out Section 138 of the Negotiable Instruments Act, the sentence prescribed is either 'imprisonment' or 'fine' or 'both'. Only in extreme cases, the



Courts ought to have imposed both imprisonment and fine. In this case, the trial Court has chosen to impose sentence of simple imprisonment for a period of six months as well as fine, which is twice the amount of the cheque, which is harsh and excessive.

5. It is also submitted by the learned counsel appearing for the revision petitioner that, having lost before both the Courts below, while preferring the revision petition as a condition for suspension of sentence, he has already deposited Rs.40,000/- (Rupees Forty Thousand only) in the trial Court to the account C.C.No.423 of 2006 and as per the direction of this Court, subsequently, he has deposited another sum of Rs.1,20,000/- on 01.07.2017 in the trial Court. It is submitted by the learned counsel appearing for the petitioner, that an amount of Rs.1,60,000/- now already has been deposited in C.C.No.423 of 2006 and that shall be taken as the fine amount to be paid as compensation to the complainant and the sentence of six months simple imprisonment shall be modified.

6. Learned counsel appearing for the respondent/ complainant would submit that the cheque was issued in the month of March 2004, which was presented on 15.12.2004 and after much legal battle, the present judgment has come against the revision petitioner and therefore, after 14 years of battle, the revision petitioner concedes his liability to escape imprisonment, which need not be taken for consideration.

7. No doubt, the battle for recovery has prolonged for nearly 14 years. Having come forward to compensate the loss as well as the money borrowed and to give a quietus to the dispute, this Court is of the opinion that while confirming the judgment, the sentence may be modified partly to the effect that, instead of six months simple imprisonment and Rs.1,60,000/- fine amount as compensation, the fine as compensation shall alone be confirmed.

8. Accordingly, the revision petition is partly allowed and the sentence is modified. The revision petitioner shall pay a sum of Rs.1,60,000/- as fine, which shall be paid as compensation to the complainant. Since the revision petitioner has already deposited the said amount in the account of C.C.No.423 of 2006, the complainant shall withdraw the money pursuant to the said order. Consequently, CrI.M.P(MD) No.2622 of 2017 is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1) The II Additional District Judge,
Ranchi, Ranchi District.



- 2) The Judicial Magistrate No.VI,
Trichy, Trichy District
- 3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court.

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+1CC to Mr.M.Pitchai Muthu, Advocate, SR.No.78999
+1CC to Mr.S.T.Sasidharan Tamilkani, Advocate, SR.No. 78763

Order made in
Cr1.R.C.(MD)No.88 of 2016
14.08.2018

STS
ES/SKN/RSK/SAR 1/17.09.2018/3P/6C