



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C (MD) No.530 of 2018

WEB COPY

R.Gopinathan : Petitioner/Respondent/Complainant

Vs.

T.Viswanathan : Respondent/Appellant/Accused

PRAYER: Revision filed under Section 387 read with Section 401 of the Code of Criminal Procedure, to call for the records of judgment passed in Crl.A.No.101 of 2016 dated 21.09.2016 on the file of the V Additional District and Sessions Court, Madurai and set aside the same and confirmed the judgment passed in S.T.C.No.186 of 2012 dated 26.05.2016 on the file of the Judicial Magistrate No.I (FTC level) Madurai by allowing this Criminal Revision Petition.

For Petitioner : Mr.B.Tamilnidhi

ORDER

This criminal revision case is directed against the modification of sentence passed by the lower appellate Court, in the matter arising under Section 138 of Negotiable Instruments Act.

2.The substance of the complaint is that the cheque for Rs.1,60,000/- was issued by the respondent and the same was bounced without fund. Since the cheque was issued for an enforceable debt, the respondent is liable for prosecution and punishment under Section 138 of Negotiable Instruments Act.

3.The trial Court after considering the evidence has found the respondent guilty and sentenced him to undergo one year simple imprisonment and also to pay a compensation of Rs.1,60,000/- being the cheque amount within a period of two months.

4.Aggrieved by that the respondent/accused preferred appeal and in the appeal the lower appellate Court has modified the sentence while confirming the conviction. The modification reads as below:-

The sentence of one year imprisonment is modified to the effect that to undergo imprisonment till the raising of the Court and the compensation amount of Rs.1,60,000/- is confirmed, in default of payment of compensation the accused shall undergo simple imprisonment for three months. The accused appeared on 06.11.2017



to undergo the sentence of imprisonment till the raising of the Court.

5.The contention of the revision petitioner is that under the guise of modification of sentence the accused has been let off without any punishment. Thus, the lower appellate Court order is erroneous. As per the Negotiable Instruments Act as well as the Criminal Procedure Code in lieu of fine, Court is competent to impose the compensation under the provisions of Negotiable Instruments Act. The compensation amount can go up to twice the amount of the cheque. In this case, the cheque drawn is Rs.1,60,000/- and under 357(3) Cr.P.C, the lower appellate Court has modified the sentence while confirming the conviction.

6.No doubt, the appellate Court has observed that the offence under Section 138 of Negotiable Instruments Act is civil in nature, which is not legally correct. Except that observation, this Court finds no error in the modification of the sentence. The remedy for the revision petitioner/complainant to approach the Court below enforcement of the recovery of compensation. Having failed to do that, by way of revision petition the revision petitioner/complainant cannot seek reappraisal of the fact of the case under revisional jurisdiction, when there is no error or illegality in the order of the Court below.

7.With the above observation, this Criminal Revision Case is disposed of.

Sd/
Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar(CS-II)

To

1.The Fifth Additional District and Sessions Judge,
Madurai.

2.The Judicial Magistrate No.I (FTC level), Madurai.

+2cc to Mr.B.TAMILNIDHI, Advocate, SR.No. 84852,85281

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