

BAIL SLIP

The Appellant / Accused namely U.Jambu, S/o.Uttam, (Sole Accused) in STC No.93/2008 on the file of the Learned Judicial Magistrate No.VII, Coimbatore was directed to be released on bail as per order of this Court dated 12/08/2010 in M.P.No.2/2010 in Crl.R.C.No.840/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22..04..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision Case No.840 of 2010

&

Crl.M.P.No.5506 of 2019

and

Criminal Original Petition No.5622 of 2011

Crl.R.C.No.840 of 2010

U.Jambu

Son of Uttam,

Proprietor of M/s.Divya's E.N.T.

No.56/1C, KRP Manor, 1st Floor,

T.V.Swamy Road West,

R.S.Puram,

Coimbatore 641 002.

... Petitioner /Appellant/Accused

-Versus-

U.R.Prasad,

Son of Unni Menon,

Door NO.35/41, Raghupathy Layout,

Saibaba Colony,

Coimbatore 641 011.

... Respondent / Complainant

This Criminal Revision Case is filed under Sections 397 r/w 401 of Cr.P.C. against the judgement dated 29.07.2010 made in C.A.No.175 of 2009 by the learned Additional District and Sessions Judge, Fast Track Court-I, Coimbatore, confirming the order of conviction and modifying the sentence dated 27.11.2009 passed in S.T.C.No.93 of 2008 by the learned Judicial Magistrate-VII, Coimbatore.

Crl.M.P.No.5506/2019 in Crl.R.C.No.840/2010: may be pleased to compound the offence and order of conviction and sentence passed in CA No.175/2009 on the file of the Addl. District and Sessions Judge (FTC No.I) Coimbatore dt.29.07.2010 confirming the order of conviction and modifying the sentence passed in STC No.93/2008 on the file of the learned Judicial Magistrate Court, Coimbatore dated 27/11/2009 for an offence Under Section 138 of the Negotiable Instruments Act.

Crl.O.P.No.5622 of 2011

U.R.Prasad,
Son of Unni Menon,
Door NO.35/41, Raghupathy Layout,
Saibaba Colony,
Coimbatore 641 011. Petitioner

-Versus-

U.Jambu
Son of Uttam,
Proprietor of M/s.Divya's E.N.T.
No.56/1C, KRP Manor, 1st Floor,
T.V.Swamy Road West,
R.S.Puram, Coimbatore 641 002.

This Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the case records relating to C.R.P.No.28 of 2010 dated 29/07/2010 on the file of the learned Fast Track Court No.I, Coimbatore, which was filed for enhancement of sentence and compensation imposed in S.T.C.No.93 of 2008 on 27.11.2009 by the learned Judicial Magistrate-VII, Coimbatore, and to modify and enhance the sentence imposed by the learned Judicial Magistrate-VII, Coimbatore from six months to one year and for a direction to the respondent to pay twice the value of the cheques as compensation.

For petitioner in : Mr.Sathishkumar for
Crl.R.C.No.840 of 2010 and Mr.B.Nambiselvan
respondent in
Crl.O.P.No.5622 of 2011

For respondent respondent : Mr.V.S.Senthilkumar
in Crl.R.C.No.840 of 2010
and petitioner in
Crl.O.P.No.5622 of 2011

COMMON ORDER

This revision is directed against the judgement dated 29.07.2010 made in C.A.No.175 of 2009 by the learned Additional District and Sessions Judge, Fast Track Court, Coimbatore, confirming the conviction under Section 138 of the Negotiable Instruments Act and modifying the sentence dated 27.11.2009 imposed in S.T.C.No.93 of 2008 by the learned Judicial Magistrate, Coimbatore, from simple imprisonment of one year to simple imprisonment of six months.

2. In this common judgement, for the sake of convenience, the parties herein will be referred to as per their array before the trial court.

3. The complainant had filed a complaint against the accused for offence under Section 138 of The Negotiable Instruments Act on the ground that he had obtained a loan of Rs.8,00,000/- from him and promised to repay the same with interest at 24% p.a. In order to discharge of the loan, the accused had issued two cheques dated 05.09.2007 one for Rs.8,00,000/- and another for Rs.2,72,000/-. When the above said cheques were presented for collection by the complainant, the same had been returned on the ground that payment was stopped. After completion of the legal formalities, the complainant had filed a complaint for offence under Section 138 of the Negotiable Instruments Act. The trial court had taken cognizance of the offence in STC No.93 of 2008. After full-fledged trial, the trial court had found the accused guilty of offence under Section 138 of The Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and ordered compensation of Rs.5,00,000/- to the complainant under Section 357(3) of Cr.P.C.

4. Aggrieved over the same, the accused had preferred a criminal appeal in C.A.No.175 of 2009 which was dismissed by the appellate court on 29.07.2010, the learned Additional Sessions Judge, however, while confirming the conviction, modified the sentence from simple imprisonment of one year to simple imprisonment of six months. Challenging the judgement of the appellate court confirming the conviction and modifying the sentence of imprisonment, the accused is before this court with Cl.R.C.No.840 of 2010.

5. Alleging that the sentence of imprisonment and the order for compensation were not adequate, the complainant had filed a criminal revision petition in C.R.P.No.28 of 2010 which was

dismissed by the learned Additional Sessions Judge on 29.07.2010 when the criminal appeal filed by the accused was disposed. Challenging the dismissal of the criminal revision petition, the complainant is before this court with Crl.O.P.No.5622 of 2011 for enhancement of punishment and compensation.

6. Pending proceedings, the accused filed an application in Crl.M.P.No.5506 of 2019 under Section 147 of the Negotiable Instrument Act seeking permission to compound the offence under Section 138 of The Negotiable Instruments Act.

7. Today, when the Criminal Revision Case and the Criminal Original Petitions are taken up for hearing, both the accused and the complainant are present along with their respective counsel. It is represented by the learned counsel for the accused that pending the above Criminal Revision Case and the Criminal Original Petition, the accused and the complainant have agreed to settle the dispute among themselves. The learned counsel for the complainant has also admitted the position. On enquiry, the complainant submitted that he had agreed to compound the offence against the accused and he had no objection to compound the offence. To this effect, as already stated supra, the accused has filed a petition under Section 147 of the Negotiable Instrument Act to compound the conviction and sentence inter alia to set aside the judgment of conviction and sentence imposed by both the Courts below.

8. Considering the fact that the dispute has been compromised between the parties and the accused has also filed a petition to compound the offence complained against the revision petitioner, this Court is of the view that the offence can be permitted to be compounded as per the decision of the Honorable Supreme Court in (i) B.M.Joshi v. State of Haryana, (2003) 4 SCC 675 (ii) Nikhil Merchant v. CBI, 2008 (3) SCC Crl 858 (iii) Jagdish Chanana and others vs. State of Haryana 2009 (3) SCC Crl. 1157.

9. In the result, (i) C.M.P.No.5506 of 2019 is allowed and the revision petitioner/accused and the respondent/complainant are permitted to compound the offence.

(ii) Crl.R.C.No.840 of 2010 is allowed and the Judgment dated 29.07.2010 made in Criminal Appeal No. 175 of 2009 by the learned Additional Sessions Judge, Fast Track Court-I, Coimbatore, confirming the Judgment of conviction dated 27.11.2009 made in S.T.C. No.93 of 2008 by the learned Judicial Magistrate-I, Coimbatore and modifying the sentence from simple

imprisonment of one year to simple imprisonment of six months are set aside.

(iii) Consequently, CrI.O.P.No.5622 of 2011 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Additional District and Sessions Judge,
Fast Track Court -I, Coimbatore,

2. The Judicial Magistrate-VII, Coimbatore.

3. The Chief Judicial Magistrate, Coimbatore.

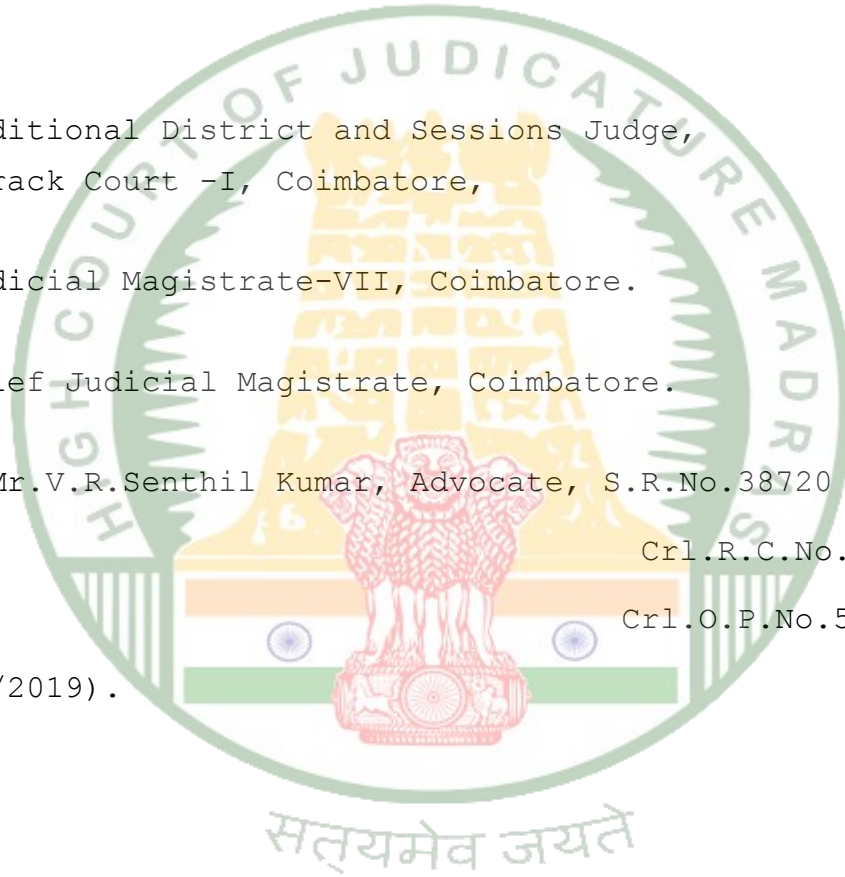
+1 cc to Mr.V.R.Senthil Kumar, Advocate, S.R.No.38720

CrI.R.C.No.840 of 2010

&

CrI.O.P.No.5622 of 2011

RV(CO)
SSM(18/07/2019).



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