

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.1401 of 2012

N.Vijaya

.. Petitioner/Complainant

Vs.

C.Panneerselvam

...

Respondent/Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to modify the judgment and order dated 25.07.2012 passed in S.T.R.No.252 of 2009 (sic C.C.No.252 of 2009) on the file of the Judicial Magistrate Court No.III, Salem, by enhancing the compensation and sentence.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.S.Kalyanaraman

O R D E R

This criminal revision has been filed seeking to modify the judgment and order dated 25.07.2012 passed in S.T.R.No.252 of 2009 (sic C.C.No.252 of 2009) on the file of the Judicial Magistrate Court No.III, Salem, by enhancing the compensation and sentence.

2. For the sake of convenience, the petitioner and the respondent will be referred to as complainant and accused, respectively.

3. It is the case of the complainant that the accused had borrowed a sum of Rs.2,00,000/- from him, towards which, he issued three cheques viz., a cheque (Ex-P1) dated 05.01.2009 for a sum of Rs.50,000/-, a cheque (Ex-P2) dated 20.01.2009 for a

sum of Rs.51,367/- and a cheque (Ex-P3) dated 30.01.2009 for a sum of Rs.98,633/-, which were dishonoured when presented and returned on 06.04.2009 vide bank's return memo (Ex-P5); therefore, the complainant issued a statutory demand notice (Ex-P5) dated 13.04.2009 and the same was received by the accused on 17.04.2009 vide postal acknowledgment card (Ex-P6); since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.R.No.252 of 2009 (sic C.C.No.252 of 2009) before the Judicial Magistrate No.III, Salem, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), in which, by judgment and order dated 25.07.2012, the accused was convicted of the said offence and sentenced to undergo two months simple imprisonment and to pay a sum of Rs.50,000/- as compensation to the complainant within three months, in default to undergo two months simple imprisonment.

4. Challenging the above conviction and sentence, the accused filed an appeal in C.A.No.82 of 2012 and the same is pending on the file of the Principal District and Sessions Court, Salem.

5. Aggrieved by the inadequacy of the sentence of compensation imposed by the trial Court, the complainant has filed the present revision invoking Section 397 r/w 401 Cr.P.C.

6. Heard Mr.B.Vasudevan, learned counsel for the complainant and Mr.S.Kalyanaraman, learned counsel for the accused.

7. It is seen that C.A.No.82 of 2012 is pending disposal before the Principal District and Sessions Court, Salem, on the ground that this Court is seized of the revision petition.

8. At this juncture, it may be relevant to state here that in S.Ganapathi Vs. N.Senthilvel¹, a Full Bench of this Court, has held that the remedy for an aggrieved complainant is before the Court of Session under the proviso to Section 372 Cr.P.C. Of course, the proviso to Section 372 Cr.P.C. does not contemplate an appeal for enhancement of sentence but envisages an appeal for inadequate compensation.

9. The learned counsel for the complainant submitted that the complainant is more interested in getting enhanced compensation rather than enhancing the punishment on the accused.

¹ 2016 (3) MLJ [Cr1] 641

10. In such perspective of the matter, this Courts issues the following directions:

(i) This criminal revision is remitted to the Principal District and Sessions Judge, Salem, to be heard along with C.A.No.82 of 2012;

(ii) The learned Principal District and Sessions Judge, Salem, shall assign separate appeal number to the present revision and hear it along with C.A.No.82 of 2012 and dispose of both the cases within three months from 20.01.2020;

(iii) The complainant and the accused shall appear before the Principal District and Sessions Court, Salem, at 10.30 a.m. on 20.01.2010; and

(iv) The Registry shall take photocopies of this revision and the impugned order and send the original records to the Principal District and Sessions Court, Salem, forthwith.

This criminal revision is disposed of in the above terms.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Judicial Magistrate No.III,
Salem.

2.The Principal District and Sessions Judge,
Salem.

3.The Deputy Registrar,
Madras High Court,
Chennai - 600 104.

Cr1.R.C.No.1401 of 2012

RR(CO)
CB(10/02/2020)

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