

Bail Slip

The Appellant/Accused namely D.Kamalakkannan
S/O.Dhandayuthapani was released on bail on 5/3/2012 in MP3/2012
in Cr1.RC.268/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.268 of 2012

D.Kamalakkannan .. Petitioner/Accused/Appellant

Vs

G.Beeman .. Respondent/ Complainant/Respondent

Criminal Revision preferred under Section 397 read with
401 Cr.P.C. challenging the judgment and order dated 23.01.2012
passed by the VI Additional Sessions Court, Chennai in C.A.No.73
of 2011 insofar as reduction of sentence imposed vide judgment
and order dated 17.03.2011 passed by the IX Metropolitan
Magistrate, Saidapet, Chennai in C.C.No.4518 of 2007.

For Petitioner : Mr.M.Chidambaram

For Respondent : Mr.V.Ayyadurai

O R D E R

This Criminal Revision has been preferred challenging the
judgment and order dated 23.01.2012 passed by the VI Additional
Sessions Court, Chennai in C.A.No.73 of 2011 insofar as
reduction of sentence imposed vide judgment and order dated
17.03.2011 passed by the IX Metropolitan Magistrate, Saidapet,
Chennai in C.C.No.4518 of 2007.

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

3. It is the case of the complainant that, on 23.09.2004, the accused borrowed Rs.1,00,000/- and executed a promissory note in his (complainant's) favour; in discharge of the said liability, the accused gave a cheque dated 05.12.2006 for Rs.1,00,000/- which, when presented by him (complainant) was returned on 21.02.2007 on the ground "funds insufficient"; he issued a statutory demand notice dated 01.03.2007 and since the accused did not comply with the demand, he initiated a prosecution in C.C.No.4518 of 2007 before the IX Metropolitan Magistrate, Saidapet, under Section 138 of the Negotiable Instruments Act, 1881, in which, the accused was convicted on 17.03.2011 and was sentenced to undergo 1 year simple imprisonment and pay compensation of Rs.2,00,000/-. Challenging the conviction and sentence, the accused filed C.A.No.73 of 2011 in the Court of Session, Chennai, which was decided on 23.01.2012. The Sessions Court confirmed the conviction and the amount of compensation that was awarded by the trial Court but, reduced the substantive sentence of imprisonment from 1 year to 6 months. Challenging the conviction and sentence, the accused has filed the present revision viz. Crl.R.C.No.268 of 2012 under Section 397 r/w 401 Cr.P.C.

4. At the time of admission, this Court, in M.P.No.3 of 2012 in Crl.R.C.No.268 of 2012, suspended the sentence and released the accused on bail, on condition that he should deposit Rs.1,00,000/- into the credit of C.C.No.4518 of 2007 in the trial Court. Accordingly, the accused deposited Rs.1,00,000/- on 20.03.2012 vide receipt No.48963. The complainant, who was not satisfied with the reduction of sentence of imprisonment by the Sessions Court, filed Crl.R.C.No.409 of 2012 before this Court for restoring the sentence imposed by the trial Court. At that time, the complainant was not aware of Crl.R.C.No.268 of 2012, that was filed by the accused and which was pending before this Court. A learned Single Judge of this Court passed the following order in Crl.R.C.No.409 of 2012 on 28.08.2012.

"... 9. On verifying the facts and circumstances of the case and submissions made by the learned counsel for the complainant and on perusing the impugned judgment of the Courts below, this Court is of the considered view that the reduction of the sentence from one year to 6 months by the appellate Court is appropriate and the compensation amount of a sum of Rs.2,00,000/- awarded by the trial Court is on the higher side. Therefore, this Court modifies the compensation from Rs.2,00,000/- to Rs.1,00,000/-, as it is found to be proper in the instant case. This Court directs the learned IX Metropolitan Magistrate, Saidapet, Chennai to issue bailable warrant on the accused and secure him into judicial custody forthwith in order to undergo 6 months S.I. If the accused

remits the compensation amount, as per this Court's order, of a sum of Rs.1,00,000/- into the credit of C.C.No.4518 of 2007, on the file of IX Metropolitan Magistrate, Saidapet, Chennai, before being remanded into judicial custody, he would be set at liberty and this Court's order would not be operated against him, any further. If the accused deposits the said compensation amount, it is open to the complainant to withdraw the said compensation amount from the trial Court, after filing a memo. The above modified order has been passed by this Court after invoking its discretionary power vested with it.

10. In the ultimate analysis, the above revision is disposed of with the above modifications. Consequently, the judgment and conviction, compensation passed in C.A.No.73 of 2011, on the file of VI Additional Sessions Court at Chennai dated 23.01.2012, modifying the conviction and sentence passed in C.C.No.4518 of 2007, on the file of IX Metropolitan Magistrate, Saidapet, Chennai dated 17.03.2011, is modified. Accordingly ordered."

A reading of the order dated 28.08.2012 in CrI.R.C.No.409 of 2012 shows that, no one had entered appearance for the accused in that case. Therefore, effectively this Court, in CrI.R.C.No.409 of 2012, has stated that if Rs.1,00,000/- is paid by the accused to the complainant, he need not have to suffer any further imprisonment. Admittedly, the accused had deposited Rs.1,00,000/- on 20.03.2012 as stated above. The complainant did not take up the matter further to the Supreme Court.

5. Under such circumstances, learned counsel for the accused seeks permission of this Court to withdraw this petition and he has also made an endorsement to that effect.

In view of the endorsement made by the learned counsel for the accused, this petition is dismissed as withdrawn and it is made clear that in view of the order dated 28.08.2012 in CrI.R.C.No.409 of 2012, the accused cannot be sent to prison for undergoing the sentence of 6 months simple imprisonment imposed by the VI Additional Sessions Court, Chennai on 23.01.2012, since the accused had deposited Rs.1,00,000/-. The complainant will be entitled to withdraw the sum of Rs.1,00,000/- and this will not prejudice the claim of the complainant before the civil Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.VI Additional Sessions Judge,
Chennai.

2.IX Metropolitan Magistrate,
Saidapet, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

CC: The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.Chidambaram, Advocate SR.79173

+3cc to Mr.V.Ayyadurai, Advocate SR.79279

CRL.R.C.No.268 of 2012

PVS(CO)

CB(07/11/2019)