



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Third day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CRL MP (MD) No.10340 of 2018

IN

CRL RC (MD) No.SR39429 of 2018

J.ARUNVASANTH

... PETITIONER/REVISION
PETITIONER

Vs

T.BASHEER AHAMED

... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to condone the delay of 195 days in filing the Crl.R.C.(MD) No.SR.39429 of 2018 in Crl.A.No.26 of 2017 on the file of the 1st Additional District Court, Madurai and thus render justice.

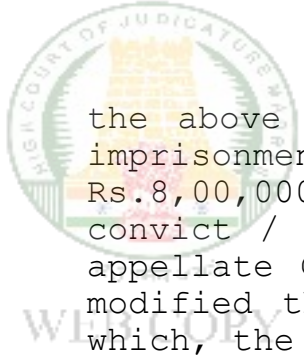
PRAYER IN CRL RC (MD) No.SR39429 of 2018:

To set aside the judgement passed by the Learned District Judge, Madurai in Crl. Appeal No.26 of 2017 dated 11.01.2018 with respect to the modification of sentence passed in S.T.C.No.1051/2013 dated 04.01.2013 on the file of the Learned Judicial Magistrate No.I, FTC Level, Madurai, in the above STC No.1015/2013 dated 04.01.2013 and pass such other necessary orders in the circumstances of this case and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.M.RAJARAJAN, Advocate for the petitioner and of M/S.P.SEPANA@SREE, Advocate for the respondent, the court made the following order:-

This petition has been filed to condone the delay of 195 days in filing the above criminal revision case against the judgment dated 11.01.2018 in Crl.A.(MD) No.26 of 2017 on the file of the I Additional District Court, Madurai.

2.The petitioner has filed a private complaint against the respondent before the learned I Additional District and Sessions Judge, Madurai for the offence under Section 138 of Negotiable Instruments Act. The trial Judge found the respondent guilty for



the above said offence, convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.8,00,000/ to the defacto complainant, against which, the convict / respondent filed an appeal in CrI.A.No.26 of 2017. The appellate Court has confirmed the conviction of the respondent and modified the sentence imposed by the trial Court, feeling against which, the petitioner / complainant has preferred the revision case.

3.Heard the learned counsel on either side. Records perused.

4.Since there is a delay of 195 days in filing the revision case, the petitioner had filed the present petition to condone the delay. Though the learned Judge found the respondent guilty for the offence under Section 138 of Negotiable Instruments Act, the respondent has not filed any appeal. However, modification of sentence passed by the learned Sessions Judge, the petitioner herein seeks restoration of sentence of imprisonment and the compensation awarded by the learned Magistrate.

5.Since there is no minimum sentence has been prescribed under Section 138 of Negotiable Instruments Act. The penal provision reads as follows:

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque or with both.

6.Once the Court found guilt of the accused and convicted when there is no minimum sentence is prescribed in the penal provision, it is purely discretionary power of the Court to award quantum of sentence and the compensation.

7.From reading of above Section, it shows that as already stated no minimum sentence has been prescribed and further, it shows that maximum terms of imprisonment is prescribed as 2 year or with fine, which may extend to twice to the amount of the cheque or with both. The same is not mandatory either of them can be awarded but need not necessarily both. In this case, though the learned Magistrate had awarded one year sentence and Rs.8,00,000/- as compensation. The appellate Court has modified the sentence. The Court does not find any arbitrariness in awarding sentence to the respondent / accused.



8.Further, the reasons stated in the affidavit is not satisfied to condone the delay of 195 days even otherwise there is no merit in the revision case itself.

9.In view of the above, this criminal miscellaneous petition is dismissed.

sd/-
03/01/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE 1ST ADDITIONAL DISTRICT COURT, MADURAI

2.THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI

3.THE JUDICIAL MAGISTRATE NO.I, FTC LEVEL, MADURAI.

4.THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.

+1. C.C. to Mr.M.RAJARAJAN Advocate SR.No.40194

+1. C.C. to M/S M/S.P.SEPANA@SREE Advocate SR.No.40475

ORDER
IN
CRL MP (MD) No.10340 of 2018
IN
CRL RC (MD) No.SR39429 of
2018
Date :03/01/2019

TK/PN/SAR-2/06.02.2019/3P/7C