



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD)No.311 of 2014

Sathyan

.. Petitioner/Complainant

Vs.

Joel Kumar

.. Respondent/Accused

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records in S.T.C.No.36 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court (M.L), Theni and set aside the conviction and sentence dated 28.03.2014 by enhancing the punishment of sentence to two years imprisonment and award compensation of Rs.5,00,000/- (Rupees Five Lakh) to the petitioner.

For Petitioner : Mr.Malaichamy

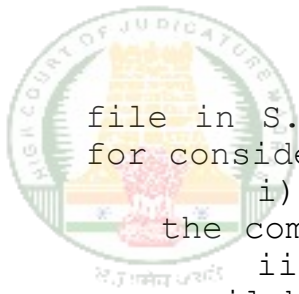
For Respondent : Mr.K.Prabakaran

JUDGMENT

This Criminal Revision Case is filed by the complainant in S.T.C.No.36 of 2013, on the file of the learned Judicial Magistrate, Fast Track Court (M.L), Theni, seeking enhancement of the sentence imposed by the trial Court, vide order dated 28.03.2014.

2. The petitioner / complainant has preferred a complaint as against the respondent / accused under Section 138 of the Negotiable Instruments Act that he has parted a sum of Rs.2,50,000/- as hand loan to the respondent / accused for developing his business on 03.01.2013 at Theni and in discharge of the said liability, the respondent / accused issued a Cheque, bearing No.387336, dated 03.02.2013, for a sum of Rs.2,50,000/-. When the Cheque was presented for collection on 07.02.2013, the same was returned as 'payment stopped'. Therefore, the complainant, after issuing a notice calling upon the respondent / accused to make the payment as required under Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, filed this complaint, after the statutory period.

3. The learned Judicial Magistrate has taken the complaint on



file in S.T.C.No.36 of 2013 and has raised the following questions for consideration:

- i) Whether there is a legally enforceable debt between the complainant and the accused?
- ii) Whether the accused has rebutted the presumption available to the complainant?
- iii) Whether the accused is guilty of offence u/s 138 of NI Act?

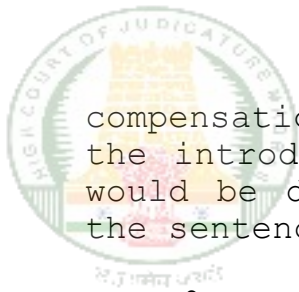
4. The learned Magistrate, in conclusion of the trial, has positively answered all the questions and found the respondent / accused guilty under Section 138 of the Negotiable Instruments Act. However, by order dated 28.03.2014, the trial Court has convicted and sentenced the respondent / accused to undergo imprisonment till the raising of Court and also to pay a compensation of Rs.25,000/-. Aggrieved over the same, the complainant has preferred the instant revision seeking enhancement of sentence.

5. The learned Counsel appearing for the respondent / accused submitted that the accused, before the trial Court, has expressed that he is willing to pay the compensation and keeping that in mind, the trial Court has sentenced him to undergo imprisonment till the raising of Court and to pay compensation of Rs.25,000/-. Therefore, he prays for dismissal of this revision.

6. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

7. A cheque is a widely used method of payment and post-dated cheques are frequently used in various transactions in business life. Post-dated cheques are given to provide certain accommodation to the drawer of the cheque. In order to ensure that the drawer of the cheque does not abuse the accommodation given to him, Chapter XVII of the Negotiable Instruments Act was introduced with the aim of inculcating confidence in the efficacy of banking operations and giving credibility to negotiable instruments employed in business transactions. If a party issues a cheque as a mode of deferred payment and the payee of the cheque accepts the same on the faith that he will get his payment on due date, then he should not suffer on account of non-payment.

8. Admittedly, the respondent / accused has not filed any appeal challenging the conviction imposed against him by the trial Court. The object of imposing punishment under the Negotiable Instruments Act is to maintain the trust in the business transactions. The trial Court, though found the respondent / accused guilty under Section 138 of the Negotiable Instruments Act, has failed to impose the punishment in proportionate to the offence committed by him. Section 357 of the Criminal Procedure Code provides for ordering compensation and the trial Court, while



compensation. In the opinion of this Court, the very object behind the introduction of this Chapter in the Negotiable Instruments Act would be defeated and therefore, this Court is inclined to modify the sentence of imprisonment ordered by the trial Court.

9. Accordingly, the sentence of imprisonment as ordered by the learned Judicial Magistrate, Fast Track Court (M.L), Theni, in S.T.C.No.36 of 2013, dated 28.03.2014, is modified to the effect that the respondent / accused shall pay a compensation of Rs.2,50,000/- [Rupees Two Lakh Fifty Thousand only], being the Cheque amount, to the credit of S.T.C.No.36 of 2013 before the trial Court, within a period of eight weeks from the date of receipt of a copy of this order, failing which, the respondent / accused shall undergo simple imprisonment for one year. The petitioner / complainant is at liberty to withdraw the said amount, by filing necessary application before the trial Court.

10. In fine, this Criminal Revision Case is allowed in the above terms.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

gk

To

1.The Judicial Magistrate,
Fast Track Court (M.L), Theni.

2.The Chief Judicial Magistrate, Theni.

3.The Principal District Judge, Theni.

Copy to:

The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. MALAICHAMY, Advocate (SR-100969[F] dated 25/11/2019

Crl.R.C. (MD)No.311 of 2014
22.11.2019

JMN(16.12.2019) 3P : 7C

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