

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020
PRONOUNCED ON : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.R.C.NO.78 OF 2018

Susilamani

.. Petitioner/Complainant

Vs.

P.Saravanan

... Respondent/Accused

Prayer:

This Criminal Revision petition is filed U/s 397 and 401 of Cr.P.C to enhance the sentence and fine imposed to the respondent/accused in STC. No.417 of 2015 on the file of the Judicial Magistrate Fast Track Court No.I Erode on 10.08.2016 and confirmed in Crl.A.No.158 of 2015 on the file of the I Additional District and Sessions Judge, Erode on 20.01.2017 and award compensation U/s 357 of Cr.P.C out of such enhanced fine amount considering the cheque amount being Rs.8,60,000/-.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.M.Mariappan

ORDER

This Criminal Revision Petition is filed to enhance the sentence and fine imposed to the respondent in S.T.C.No.417 of 2015 on the file of Judicial Magistrate, Fast Track Court No.I, Erode dated 10.08.2016, confirmed in Criminal Appeal No.158 of 2015 on the file of the I Additional District and Sessions Judge, Erode on 20.01.2017.

2. The petitioner filed complaint Under Sections 138, 142 of Negotiable Instruments Act against the respondent stating that the respondent borrowed a sum of Rs. 8,60,000/- on 05.10.2014 for the purchase of a new van and for the urgent family expenses. On the same day he gave a cheque for Rs.8,60,000/- drawn on Canara Bank, Villarasampatti Branch, Erode. He requested the petitioner to present the cheque during 2nd week of february for collection. The petitioner presented the cheque for collection through Canara Bank. The cheque was returned for the reason that there was no sufficient funds on 25.02.2015. On

19.03.2015 the petitioner sent a legal notice to the respondent and the respondent received the notice on 20.03.2015. Even then the respondent has not paid the amount as demanded in the notice, which necessitated the petitioner to file the complaint.

3. During the course of trial P.W.s 1 to 3 were examined on the side of the petitioner and Ex.Ps P1 to P.8 had been marked. D1 to D3 had been examined on the side of the respondent and Ex.Ps.R1 to R3 had been marked. On considering the oral and documentary evidences produced in the case, the learned Judicial Magistrate found the accused guilty U/s 138 of Negotiable Instruments Act and sentenced the respondent to undergo simple imprisonment for 6 months and imposed a fine of Rs.5,000/-. In default to pay the fine to undergo simple imprisonment for 15 days. The respondent preferred an appeal in C.A.No.158 of 2016 on the file of the first Additional District and Sessions Judge, Erode. The learned Judge found no reason to interfere with the Judgment of the Judicial Magistrate, Fast Track Court No.I, Erode and dismissed the appeal. Now, the petitioner has filed this Revision as stated earlier for enhancing the sentence, fine and to pay compensation U/s 357 of Cr.P.C.

4. The point for consideration in this Revision petition is whether the petitioner is entitled to seek for enhancement in sentence, fine and compensation.

5. The learned counsel for the petitioner submitted that the Cheque amount was Rs.8,60,000/- When the Courts below found the accused guilty under Section 138 of Negotiable Instruments Act, they should have imposed double the cheque amount as fine and ordered compensation to the petitioner. Infact the petitioner had specifically prayed in the complaint and in the proof affidavit that the Court has to award maximum punishment to the accused/respondent and that the cheque amount has to be paid as compensation to him. However, his request was not considered by the Courts below. Therefore, this Revision is filed. In support of the case of the petitioner, that the petitioner is entitled for compensation, the learned counsel for the petitioner relied on the rulings reported in AIR 2004 SC(408) [Goa Plast (p) Ltd., Vs Chick Ursula D'Souza], AIR 2011 SC(2566) [Kaushalya Devi Massand Vs. Roopkishore Khore] and the Judgments in Criminal No.1398 of 2003 [K. Vijayan Vs. Appukutti] and Criminal R.C.No.32 of 1430 of 2013 [A. Sethurama Subbaiah Vs. Thomas].

6. In reply the learned counsel for the respondent submitted that the respondent had already undergone the sentence and the petitioner has filed this petition only to harass him. The petitioner has not preferred any revision against the Judgment of the learned Judicial Magistrate before the Sessions Court for enhancement of the sentence, fine and payment of compensation.

Therefore, the petition filed now after the respondent had undergone the sentence imposed would amount to double jeopardy against the spirit of the law.

7. The learned counsel for the respondent also relied on the Judgment in CrI.R.C.(M.D).No.34 of 2012 [K. Sudhakar Vs. P.B. Shyamkumar], in support of his case, wherein it has been held that, "it is not mandatory to order sentence and fine and it is purely in the discretion of Court to award quantum of sentence and compensation";

8. It is seen from the case advanced by the parties there is nothing involved with regard to the factual aspects of this case. Only thing to be considered is whether the petitioner is entitled to seek for enhancing the sentence, fine and compensation. It is seen from the ruling Reported in AIR 2004 SC 408 [Goa Plast (p) Ltd., Vs Chick Ursula D'Souza] that :

The object and the ingredients under the provisions, in particular. Section 138 & 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. undoubtedly, dishonour of a cheque by the Bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious set back. The parliament in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a Civil Court is a long drawn matter and unscrupulous drawer normally takes various plea to defeat the genuine claim of the payee.

We, therefore grant one month's time from this date to the respondent herein to pay a sum of Rs.80,000/- (twice the amount of the cheque) by way of Demand Draft drawn in favour of the appellant and payable at Goa (in the address given in the paper book). In default thereof, the respondent shall suffer simple imprisonment for six months.

9. Other Judgments relied on by the learned counsel for the petitioner supports this view of the Supreme Court and ordered suitable sentence, fine and also the compensation. The idea behind having the provision for imposing double the cheque amount as fine, payment of compensation is to see that the parties who issue cheques should ensure that they have sufficient funds in their accounts. Though it is not mandatory, as seen from the Judgment relied by the learned counsel for the respondent to impose compensation the Courts are imposing double the cheque amount as fine and also order payment of compensation to the payee. Section 357(4) Cr.P.C empowers Revisional Court to order payment of compensation in the exercise of its Revisional Power. Section 357(4) of Cr.P.C reads as follows:

"An order under this Section may also be made by an appellate Court or by the High Court or Court of Session when exercising its powers of revision."

10. It is seen from proof affidavit filed by the petitioner that he requests the Court to impose the maximum sentence to the respondent and the cheque amount as compensation to him. However, both the Courts below have not ordered compensation to the petitioner. Now, the petitioner has chosen to file the Revision before this Court, which in the considered opinion of this Court is legally maintainable. The cheque amount is Rs.8,60,000/-. The respondent had undergone the sentence of six months simple imprisonment and also paid a fine of Rs.5,000/-. However, the petitioner is not able to realise the cheque amount which was given as a loan to the respondent. In the facts and circumstances of this Case when the cheque amount is Rs.8,60,000/- this Court is of the view that the petitioner is entitled to receive the cheque amount as compensation.

11. In this view of the matter, finds that the petitioner is entitled for seeking enhanced fine and the payment of compensation from the fine amount. Since, the respondent had already undergone 6 months simple imprisonment, this Court is of the view that there is no need to enhance the sentence. With regard to the fine amount, it is enhanced to Rs. Rs.8,60,000/- from Rs.5,000/-. As the respondent had already paid Rs.5,000/- as fine he is directed to pay the fine of Rs.8,55,000/- and the fine amount of Rs.8,60,000/- is ordered to be paid as compensation to the petitioner.

12. This petition is allowed on the above terms.

13. In the result this petition is allowed in part. The prayer for enhancement of sentence against the respondent is rejected and the fine amount is enhanced to Rs.8,60,000/-, the

respondent is directed to pay the fine of Rs.8,60,000/- and the same is to be paid as compensation to the petitioner. In default to pay the fine, respondent has to undergo simple imprisonment for 6 months. Ordered accordingly.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

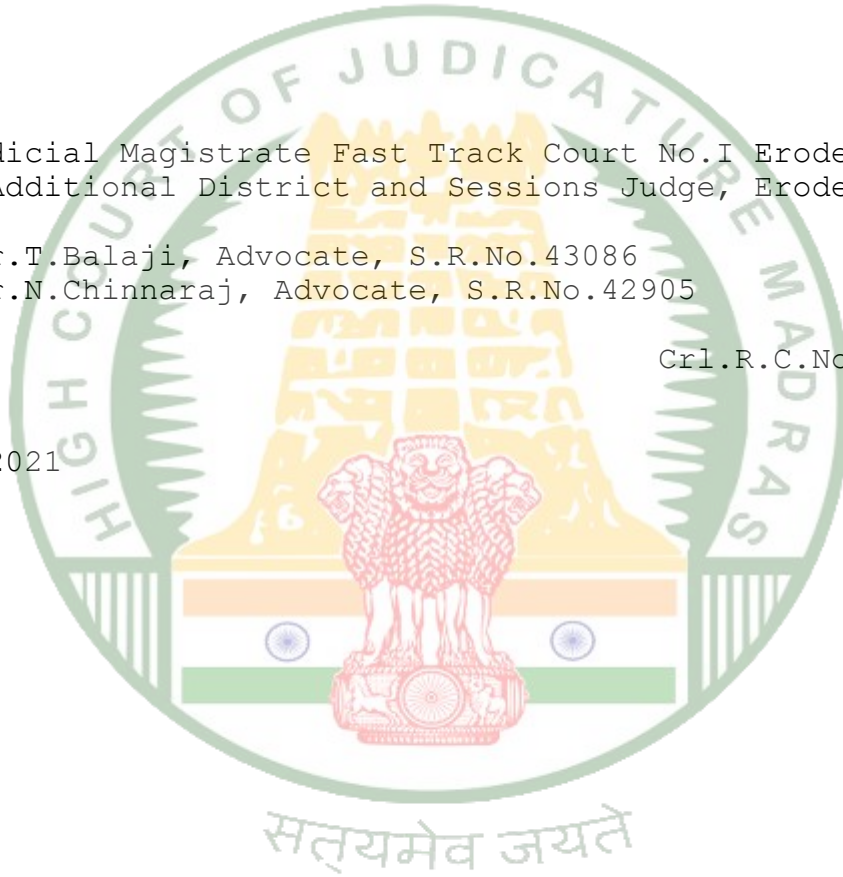
1. The Judicial Magistrate Fast Track Court No.I Erode.
2. The I Additional District and Sessions Judge, Erode.

+1cc to Mr.T.Balaji, Advocate, S.R.No.43086

+1cc to Mr.N.Chinnaraj, Advocate, S.R.No.42905

CrI.R.C.No.78 of 2018

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