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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Cr1.R.C.No.608 of 2017

M/s.National Fire Armor,
Rep.by its Partner Mr.A.S.Menon
No.41-A, Kutty Street,
Nungambakkam,
Chennai-600 034.

... Petitioner

Vs.

R.Somarajan,
Prop.M/s.Karthik Wood Industries.

... Respondent

Criminal Revision Case filed under Sections 397(1) and 401 Cr.P.C praying to set aside the judgment of the learned XVII Additional District and Sessions Judge, Chennai dated 26.08.2016 in C.A.No.14 of 2016 modifying the sentence imposed by the Metropolitan Magistrate Court, FTC-I, Chennai in C.C.No.2261 of 2007 dated 29.12.2015.

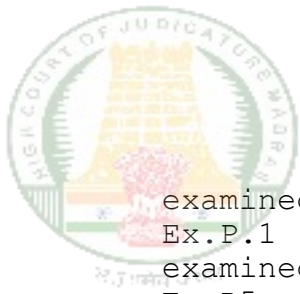
For Petitioner : Mr.Manoj Sreevalsan

For Respondent : Mr.C.Russelraj

O R D E R

The Criminal Revision Case has been preferred challenging the judgment of the learned XVII Additional District and Sessions Judge, Chennai, dated 26.08.2016 made in C.A.No.14 of 2016.

2. This case has arisen out of a private complaint given by the petitioner/complainant on the allegation that the cheque issued by the respondent for a sum of Rs.25,000/- dated 09.07.2003, for discharge of liability owed by him and it was returned as "Insufficient Funds" on 06.10.2003. After issuing statutory pre suit notice and after complying the legal mandates, the complainant has filed the complaint against the accused for committing the offence under Section 138 r/w 142 of the Negotiable Instruments Act (hereinafter referred as N.I.Act). The case was taken on file by the learned Metropolitan Magistrate Court, FTC-I, Chennai in C.C.No.2261 of 2007 and the trial was conducted.



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3. On the side of the complainant, 2 witnesses were examined as PW.1 and PW.2 and 7 documents were marked as Ex.P.1 to Ex.P.7. On the side of the accused, he himself examined as DW.1 and 5 documents were marked as Ex.D1 to Ex.D5.

4. After the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge found the accused guilty under Section 138 of N.I.Act, convicted and sentenced him to undergo simple imprisonment for 6 months and awarded an amount equal to the cheque amount of Rs.25,000/- as compensation payable to the complainant within a period of 2 months.

5. Against the conviction, the accused has filed an appeal in C.A.No.14 of 2016, before the learned XVII Additional Judge, City Civil Court, Chennai and it was dismissed on 26.08.2016. However the sentence was modified by imposing a fine of Rs.25,000/-; in default to undergo 2 months simple imprisonment and also awarding compensation of Rs.25,000/- to the complainant. Aggrieved over that the petitioner/complainant has preferred this Criminal Revision Case.

6. Heard the learned counsel for the petitioner/complainant and the learned counsel for the respondent/accused.

7. The learned counsel for the revision petitioner/complainant submitted that the learned appellate judge has not given any reason to the reduction of punishment from imprisonment to mere fine and in the offence of this nature such lenience should not be shown. In support of his contention, he cited the decision of the Hon'ble Supreme Court of India rendered in H.Pukhraj Vs. D.Parasmal reported in MANU/SC/0992/2014, which reads as under:

"4. In Suganthi Suresh Kumar V. Jagadeeshan, MANU/SC/0037/2002 : 2002 (1) R.C.R. (Criminal) 502 : (2002) 2 SCC 420, this Court was considering the propriety of inadequate sentence imposed by Courts on the accused charged under Section 138 of the NI Act. This Court expressed displeasure about Courts imposing a flea-bite sentence on the accused. Following paragraph from the said judgment could be quoted:

"12. The total amount covered by the cheques involved in the present two cases was Rs.4,50,000/-. There is no case for the respondent that the said amount had been paid either



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during the pendency of the cases before the trial Court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a fine-bite sentence as had been chosen by the trial Court. But in a case where the amount covered by the cheque remained unpaid, it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case""

8. The learned counsel for the respondent/accused submitted that the learned first appellate Judge had taken into consideration the lesser amount involved in the cheque and chosen to impose a fine amount equal to that of the cheque as compensation. No doubt, the Court ought to have taken serious view and imposed fine amount and sentence. In the case in hand the cheque was issued to discharge a liability of Rs.25,000/- only. The learned appellate Judge did not modify the finding of the learned trial Judge and confirmed the guilt of the accused. However some lenient view was shown in imposing the punishment for non payment of fine, which would immediately attract 2 months S.I. Apart from this, the respondent is also pushed to pay a compensation of Rs.25,000/-.

9. Points for consideration:

"Whether the sentence and judgment of the lower Appellate Court confirming the judgment of the learned trial Judge is unfair, improper or not legal and in conformity with the offence proved to have committed by the accused?"

10. According to the submission of the learned counsel for the respondent/accused, the fine amount was immediately paid and compensation also paid. The learned



counsel for the petitioner/complainant submitted that to his knowledge the compensation amount was not paid. During the course of argument, the learned counsel for the respondent/accused submitted that the fine amount and the compensation amount was paid before the lower Court on 05.10.2016. By filing of petition in CrI.M.P.No.3915 of 2016. Despite there is no reason given by the learned appellate judge imposing fine or sentence is well within his limit under Section 138 of N.I.Act, it is apparent that the learned appellate Judge imposed lenient punishment taking into consideration of the amount involved in the cheque. Since the fine and compensation had been paid, I find no reason for interference. The petitioner is at liberty to file appropriate petition before the lower Court for withdrawing the compensation entitled to him.

11. In the result, this Criminal Revision Case stands dismissed. The judgment of the Metropolitan Magistrate Court, FTC-I, Chennai, dated 29.12.2015 passed in C.C.No.2261 of 2007, which was confirmed by the learned XVII Additional District and Sessions Judge, Chennai, dated 26.08.2016 passed in C.A.No.14 of 2016 are set aside.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The XVII Additional District and Sessions Judge,
Chennai.
- 2.The Metropolitan Magistrate Court,
FTC-I, Chennai.
- 3.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.Manoj Sreevalsan, Advocate SR. No. 67349

CrI.R.C.No.608 of 2017

BP (CO)

PR (25/02/2022)