



CrI RC .No.169 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI RC No.169 of 2018

N.Saradamma

..Revision petitioner / Appellant /
Accused

Vs.

S.Kanaga Sabapathy

...Respondent /Respondent/
Complainant

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC against the judgement of conviction imposed in CrI. A No.43 of 2017 on the file of the XVI Additional sessions Judge, City Civil Court, Chennai dated 12.09.2017 confirming the judgement of conviction imposed in C.C.No.1188 of 2010 on the file of the Metropolitan Magistrate /Fast Track court IV, George Town, Chennai dated 17.10.2016 to undergo 6 months simple imprisonment for the offence under Section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.P. Sonu



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For Respondent : No appearance

ORDER

This Criminal Revision case has been filed against the judgement and order passed by the learned XVI Additional sessions Judge, City Civil Court, Chennai dated 12.09.2017, partly allowing the appeal by confirming the sentence of six months simple imprisonment and setting-aside the sentence of compensation imposed by the Trial Court while convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act in C.C.No.118 of 2010 dated 07.10.2016.

2. As against the order passed by the Appellate Court in C.A. No.43 of 2017, the respondent / complainant filed CrI RC No.1533 of 2017 before this Court. This Criminal Revision case was dismissed by an order dated 27.09.2022 and the relevant portions in the order are extracted hereunder :-

3. The case of the complainant is that for borrowing



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Rs.70,000/- (Rupees Seventy Thousand Only) on 22.12.2018, the accused had executed a promissory note on the same day and agreed to pay the interest at the rate of 18%. Further a sum of Rs.50,000/- (Rupees Fifty Thousand Only) was lend as a hand loan on 01.09.2009. After receiving these two loans, the accused had failed to re-pay the principal and the interest. After repeated demand of the complainant, the subject cheque for Rs.1,33,000/- was issued by the accused/respondent herein.

4. The trial Court, on considering the evidence of the complainant and Ex.P1 to Ex.P6, convicted the accused to undergo six months simple imprisonment and to pay compensation of Rs.2,00,000/-. The same was challenged by the accused in Criminal Appeal No.43 of 2017 before the XVI Additional Sessions Court, Chennai. The lower Appellate Court has partly allowed the appeal to the effect that the conviction of six months simple imprisonment was confirmed and taking note of the fact that the cheque amount of Rs.1,24,192/- (Rupees One Lakh Twenty Four Thousand One Hundred and Ninety Two Only) was already paid by the appellant, the order of compensation awarded by the trial Court got set aside. Aggrieved by disallowing the compensation part, the de facto complainant has preferred this revision petition.

5. Though this Revision Petition is filed, in spite of adjourning this matter on several occasions, there is no representation for the revision petitioner.



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6. On perusing the records and hearing the learned counsel for the respondent/accused, it appears that based on the promissory note executed by the respondent, the Civil Court decree has been obtained and the entire amount with interest has been recovered by way of attachment of salary. Since, the complainant has satisfied himself by recovering the amount, which he has lend to the respondent, by way of executing the Civil Court decree, the order of compensation under section 357 of Cr.P.C., in the cheque dishonoured case, for the same liability need to be set aside, otherwise it will amounts to double payment. Hence, the Lower Appellate Court has rightly set aside the order of compensation.

7. In view of the above, this Court fully concur with the submissions made by the learned counsel for the respondent and finds no merit in the revision petition, challenging the judgment of the First Appellate Court. Hence, this Criminal Revision Petition is dismissed.

3. The respondent has been served and the name of the respondent has also been printed in the cause-list. However, the respondent has not chosen to contest this Criminal Revision case



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either in person or through counsel. This is due to the fact that the entire amount with interest has been recovered by the respondent from the salary of the petitioner and therefore, the respondent is not interested in prosecuting this criminal revision case.

4. If the respondent has recovered the entire amount with interest from the petitioner, no useful purpose will be served in proceeding further to convict the petitioner and to make him to undergo six months simple imprisonment. In view of the same, the offence is compounded due to the settlement of the entire amount with interest and the judgement and order passed by both the Courts below are hereby set-aside.

5. This Criminal Revision case is disposed of in the above terms. No costs.

16.03.2023



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Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order

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N. ANAND VENKATESH, J.

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To

XVI Additional sessions Judge, City Civil Court, Chennai

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