

Suresh Vs. Natarajan

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Court : Chennai

Decided On : Nov-25-1998

Reported in : 1999CriLJ968

Judge : M. Karpagavinayagam, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 142; Code of Criminal Procedure (CrPC) - Sections 29(2), 397 and 401

Appeal No. : Crl. R.C. No. 614 of 1997

Appellant : Suresh

Respondent : Natarajan

Advocate for Def. : G. Anbumani, Adv.

Advocate for Pet/Ap. : P. Arivudai Nambi, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

M. Karpagavinayagam, J.

1. Aggrieved over the inadequacy of sentence imposed upon the respondent/accused sentencing him to pay a fine of Rs. 5,000/-, in default to

undergo S. I. for 3 months, for the offence under Section 138 of the Negotiable Instruments Act, the petitioner/complainant has filed this Revision invoking Sections 397 and 401 Cr. PC.

2. Suresh, the petitioner herein/complainant, on non-payment of a cheque amount of Rs. 25,000/- by the accused, despite the issue of statutory notice, filed a private complaint in C.C. No. 57/96 on the file of the District Munsif-cum-Judicial Magistrate, Vendasandur. The trial Court on consideration of the materials produced by P.Ws. 1 and 2 through whom Exs. P1 to P6 were filed on the side of the prosecution and the evidence of D.W. 1 on the side of the defence, convicted the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to pay a fine of Rs. 5,000/-, in default to undergo S. I. for 3 months.

3. The grievance ventilated by the petitioner/ complainant herein is that the sentence of fine of Rs. 5,000/- is not adequate in terms of the provision of the Negotiable Instrument Act, especially, when the penal section provides for the punishment of imprisonment for one year or of fine to the extent of twice the amount of the cheque or of both.

4. The conviction by the trial Court was imposed on 2-6-97. The petitioner has straightway filed this Revision for enhancement of the sentence before this Court and the same has been admitted on 18-7-97. In the meantime, the respondent/accused has filed an appeal against conviction before the Sessions Court, Dindigul. When this Revision came up on 24-8-98 for final disposal, it was brought to the notice of this Court that the appeal against the conviction was pending before the lower appellate Court at Dindigul. Ultimately, the appeal was dismissed by the lower appellate Court by the order dated 16-10-98 by confirming the conviction and sentence.

5. The counsel appearing for the petitioner, on the strength of the decision rendered by this Court in Prabhakar v. Naresh Kumar N. Shah 1994 MLJ 91, would submit that despite the provision under Section 29(2) Cr. P.C. empowering the Magistrate to impose a fine of maximum Rs. 5,000/-, in view of the primary clause in Section 142 of the Negotiable Instruments Act, namely, notwithstanding

anything contained in the Code of Criminal Procedure, the Magistrate is empowered to impose fine not exceeding to the extent of twice the amount of the cheque. This decision rendered by this Court has also been referred to while expressing the same view by the Kerala High Court in K.P. Sahadevan v. T.K. Sreedharan .

6. On the strength of these decisions, it is submitted that the learned Magistrate ought to have imposed the fine of, at least, Rs. 25,000/-, the cheque amount, if not, twice the cheque amount. It is also brought to the notice of this Court the decision of the Apex Court in Eknath Shankarrao Mukkawar v. State of Maharashtra : 1977 CriLJ964 wherein it is held that this Court, under Section 397 and 401 Cr. P.C., would confer with the power to enhance suo motu the sentence imposed by the lower Court, if it finds that the sentence is inadequate.

7. Heard the learned counsel for the respondent.

8. As far as the proposition of law is concerned, as laid down by this Court as well as the Apex Court, there is no second opinion with reference to the power of the Courts. But, the question is whether the sentence imposed by the lower Court under the facts and circumstances of the case is adequate or not.

9. The learned Magistrate, while imposing the conviction and the sentence of fine of Rs. 5,000/-, did not advert to the provision under Section 29(2) Cr. P.C. stating that he is empowered to impose a fine of Rs. 5,000/- alone. No doubt, it is true that Section 138 of the Negotiable Instruments Act provides for the payment of fine to the extent of twice the amount of cheque. That does not mean that in every case, the Court is bound to impose fine to the value of the amount of the cheque or twice the value of the cheque. The section would also provide for the sentence of imprisonment or fine or both. Therefore, the learned Magistrate has got judicial discretion either in the imposition of imprisonment or fine or of the amount of fine which he would deem fit to be imposed.

10. In that view of the matter, I do not find any reason to hold that the sentence of fine of Rs. 5,000/- is quite inadequate.

11. It is also to be noticed in this context that besides this remedy of punishing the accused under this offence by collecting the amount by fine, there is yet another remedy available for the complainant to file a suit for recovery of the disputed amount out of the cheque amount.

12. In view of this situation, I do not find any merit in this Revision, though this Court agrees with the principle of law laid down by the decisions referred to above.

13. In the result, the Revision is dismissed.

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