

C.R.Sivakumar Vs. K. Balakumar

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Court : Chennai

Decided On : Oct-31-2012

Reported in : 2013(1)MLJ(CrI)257

Judge : C.S. Karnan

Appeal No. : CrI.R.C.No. 108 of 2006

Appellant : C.R.Sivakumar

Respondent : K. Balakumar

Advocate for Pet/Ap. : For the Petitioner: K.S. Kumar, Advocate. For the Respondent: No Appearance.

Judgement :

(Prayer: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., against the order passed by the learned Additional Sessions Judge, Fast Track Court-I, Coimbatore in Criminal Revision Petition No.201 of 2003, dated 25.11.2004 enhancing the punishment of the order passed by the learned Judicial Magistrate-V, Coimbatore in S.T.C.No.1499 of 1998, convicting the petitioner by judgment dated 30.10.2003.)

1. The revision petitioner / respondent / accused No.2 has preferred the present revision in CrI.R.C.No.108 of 2006 against the judgment made in Criminal Revision Petition No.201 of 2003, on the file of Additional Sessions Judge / Fast

Track Court-I, Coimbatore modifying the judgment passed in S.T.C.No.1499 of 1998, on the file of the Judicial Magistrate-V, Coimbatore.

2. The respondent / complainant's case is as follows:-

The second accused, is the partner of the first accused firm. The second accused had borrowed a sum of Rs.2,00,000/- from the complainant on 01.10.1997 agreeing to pay the said sum with interest at the rate of 24% per annum and had executed a pronote to this effect. In order to discharge a part payment of the said loan, the accused had issued a cheque dated 02.03.1998, drawn on Dhanalakshmi Bank Limited, Coimbatore for a sum of Rs.2,00,000/-, to and in favour of the complainant. When the complainant presented the said cheque for encashment with his banker's, viz., Andhra Bank, Mill Road Branch on 16.03.1998, it was returned unpaid due to "insufficient funds" in the account of the accused. The complainant sent a lawyer's notice to the accused on 31.03.1998, which was received by the accused. In spite of receipt of notice, the accused had neither replied nor paid the cheque amount. Hence, the complainant had filed a complaint against the accused for an offence under Section 138 of Negotiable Instruments Act before the Judicial Magistrate-V, Coimbatore.

3. On being questioned, the accused pleaded not guilty and hence trial was conducted. On the complainant's side, two witness were examined and five documents were marked as Exs.P1 to P5, viz., Ex.P1-cheque dated 02.03.1998, Ex.P2-return memo, Ex.P3-lawyer's notice dated 30.03.1998, Ex.P4-acknowledgment cards (two in numbers), Ex.P5-bank account statement of accused. On the side of the accused, one witness was examined and five documents were marked as Exs.R1 to R5 viz., Ex.R1-agreement dated 11.09.1998, Ex.R2-statement of account of accused, Ex.R3-xerox copy of bankers cheque dated 22.05.2003 for a sum of Rs.48,500/-, Ex.R4-promissory note and Ex.R5-bank account statement of accused.

4. P.W.1, the complainant had adduced evidence which is corroborative with the statements made in the complaint. He further adduced evidence that the agreement entered into between him and the accused after filing of the case has been marked as Ex.R1. In support of his evidence, he had marked the exhibits

listed a Exs.P1 to P4.

5. P.W.2, Vivekanandan, the Officer of Dhanalakshmi Bank had adduced evidence that the accused maintained a current account in the name of their firm "Eswari Cycle Stores". He deposed that when the said cheque was presented for collection in their bank on 16.03.1998, it was returned unpaid for the reason, "insufficient funds" as the balance in the account of accused at the time was only Rs.305.87/-. In support of his evidence, he had marked Ex.P5, the bank account statement of accused.

6. The second accused was examined as R.W.1. R.W.1 had adduced evidence that he had paid the complainant the sum of Rs.2,00,000/- borrowed from him on 01.10.1996, on several different occasions, and had marked Ex.R2, the statement of accounts showing payments of the said loan in installments on several occasions. He deposed that he had paid a sum of Rs.1,51,500/- to the complainant and that for the balance amount of Rs.48,500/- he had taken a banker's cheque in favour of the complainant. He deposed that the complainant had refused to receive the banker's cheque though he had tried to give it to him on several occasions. In support of this evidence, he had marked Ex.P3, the copy of banker's cheque for Rs.48,500/-. He deposed that at the time of issuance of loan, the complainant had collected two blank promissory note, two blank cheques and two blank stamp papers from him and that the complainant had entered the details of payment made in the back of promissory note and given it to him. In support of this evidence, he had marked the promissory note as Ex.R4. He deposed that he had made some payments to the complainant through cheques and this had been reflected in the statement of account of the accused which was marked as Ex.R5. He deposed that he is willing and ready to return the balance amount of Rs.48,500/- due to the complainant.

7. The learned Magistrate on scrutiny of Ex.R1 observed that the complainant had admitted the execution of this agreement and that this agreement was executed on 11.09.1998 after filing of the case in Court between the complainant and accused. From a scrutiny of Ex.R1, it is seen that the accused had paid a sum of Rs.1,00,000/- as part payment of the loan of Rs.2,00,000/- obtained from

complainant and that the accused had promised to settle an amount of Rs.50,000/- on 30.10.1998 and the balance amount of Rs.50,000/- on 30.11.1998. Hence, the learned Magistrate held that the accused had already paid a sum of Rs.1,00,000/- as part payment of loan of Rs.2,00,000/- received from the complainant. The learned Magistrate rejected the document marked Ex.R2, i.e., statement of accounts as it had been prepared by the second accused. The learned Magistrate opined that if at all the accused had effected payment as per statement of accounts shown in Ex.R2, he should have received the receipts for such payments made, from the complainant.

8. The learned Magistrate on scrutiny of the document marked as Ex.P5, i.e, the bank account statement of accused observed that the accused had paid a sum of Rs.51,500/- to the complainant from 04.11.1996 to 21.10.1997. Hence, the learned Magistrate on considering that the accused had already paid a sum of Rs.1,51,500/- to the complainant and on observing that the accused is willing to pay the balance of Rs.48,500/- through banker's cheque held that a light sentence of fine alone can be imposed on the accused.

9. However, the learned Magistrate held the accused 1 and 2 guilty of offence under Section 138 of Negotiable Instruments Act and imposed a fine of Rs.1,000/- on the first accused and Rs.3,000/- on the second accused and also directed the second accused to pay the fine imposed on the first accused. The learned Magistrate also directed the accused to pay the original banker's cheque of Rs.48,500/- to the complainant after demand made by him.

10. Not being satisfied by the sentence imposed by the trial Court, the complainant had filed a Criminal Revision Petition in C.R.P.No.201 of 2003 before the Additional Sessions Judge, Fast Track Court-I, Coimbatore. It was contended on the side of the appellant that the Magistrate of the trial Court, after holding that the accused was guilty of offence under Section 138 of Negotiable Instruments Act should have imposed an adequate punishment on the accused. It was contended that the trial Court Magistrate, on merely considering that the accused had paid a sum of Rs.1,51,500/- to the complainant and that the balance amount would be paid by the accused shortly had failed to consider the dishonour of cheque caused

by the accused. Hence, it was prayed to enhance the punishment imposed on the accused. The learned judge, on considering that the accused had not appeared before Court, in spite of various opportunities given to them and on considering that the punishment of only a fine imposed by the trial Court is inadequate, directed the second accused to pay a compensation of Rs.75,000/- to the complainant, instead of fine of Rs.3,000/- within one month from the date of their order. In default of payment of compensation, the second accused was to undergo simple imprisonment for three months. However, the learned Judge confirmed the fine of Rs.1,000/- imposed on the first accused firm. The learned judge also permitted the second accused to withdraw the fine amount paid by him after he deposits the compensation amount into the trial Court.

11. Aggrieved by the modified order passed by the appellate judge, the respondent / second accused has preferred the present revision.

12. The learned counsel for the revision petitioner has contended that the petitioner / accused had paid a sum of Rs.1,51,500/- between the period from 04.11.1996 to 26.12.1997. Moreover, the petitioner / accused was ready and willing to pay the balance of Rs.48,500/- by way of a Bank of Baroda, Coimbatore Branch pay order dated 22.05.2003, which was marked as defence document No.3. It was pointed out that pending proceedings, the entire cheque amount was discharged by the petitioner / accused. It was pointed out that as on the date of complaint, the complainant had received Rs.1,51,500/- from the accused. It was also contended that the learned judge ought not to have enhanced the punishment without giving an opportunity to the petitioner / accused since as per Section 401(2), no order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. Hence, it was prayed to revise the order passed by the learned Additional Sessions Judge / Fast Track Court-1, Coimbatore.

13. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel for the revision petitioner and on perusing the impugned order of the appellate Court passed in the criminal revision, this Court is of the considered view that the compensation amount of a sum of Rs.75,000/- awarded

is slightly on the higher side. Therefore, this Court reduces the compensation from Rs.75,000/- to Rs.50,000/- (Rupees Fifty Thousand only), as it is found to be appropriate in the instant case. Further, this Court imposes a sentence of simple imprisonment of two months on the second accused. The accused has to either pay the compensation amount or to undergo two months simple imprisonment. The appellate Court's order setting aside a fine amount of Rs.3,000/- imposed on the second accused is confirmed. This Court directs the learned Judicial Magistrate-V, Coimbatore to issue bailable warrant and secure the second accused forthwith into judicial custody. If the second accused remits the compensation amount of Rs.50,000/- into the credit of S.T.C.No.1499 of 1998, on the file of Judicial Magistrate-V, Coimbatore, before being remanded into judicial custody, the accused would be set at liberty and the sentence of simple imprisonment for two months imposed on the accused would not be operated upon any further. If the accused deposits the said amount, it is open to the complainant to withdraw the same after filing a Memo before the trial Court. This order has been passed by this Court after invoking the discretionary power vested with it.

14. Resultantly, the above revision is partly allowed with the above modifications. Consequently, the conviction and judgment passed in Criminal Revision Petition No.201 of 2003, on the file of the Additional Sessions Judge, Fast Track Court-I, Coimbatore, dated 25.11.2004, modifying the judgment made in S.T.C.No.1499 of 1998, on the file of the Judicial Magistrate-V, Coimbatore, dated 30.10.2003 is modified. Accordingly ordered.

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